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इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांख्यिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 24 जुलाई, 2002

का.प्रा. 2463.—यतः सुरक्षा संबंधी विषय पर विचार करते हुए, सचिवालय सुरक्षा बल (एस.एस.एफ.), गृह मंत्रालय की कमान और उसका नियंत्रण दिनांक 8 जनवरी, 2001 से केन्द्रीय औद्योगिक सुरक्षा बल (सी.आई.एस.एफ.) को अंतरित कर दिया गया था। सचिवालय सुरक्षा बल के केन्द्रीय औद्योगिक सुरक्षा बल में विलय से संबंधित आदेश दिनांक 30 अप्रैल, 2001 को जारी किए गए थे।

2. अतः, अब, केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1965 के नियम 12 के उप नियम (2) के खंड (ख), नियम 24 के उप नियम (1) और नियम 29 के तहत प्रदत्त शक्तियों का प्रयोग करने हुए, राष्ट्रपति, एतद्वारा यह निर्देश देते हैं कि इस आदेश के प्रकाशन की तारीख से, और अगले आदेशों तक इस आदेश की नीचे दी गई सारणी के कालम 2 में विनिर्दिष्ट सचिवालय सुरक्षा बल, गृह मंत्रालय में पदों के संबंध में अन्शासनिक प्राधिकार, अपीलीय प्राधिकार और पुनरीक्षण प्राधिकार की शक्तियों का हस्तैमाल कालम (3), (4) और (5) में उल्लिखित प्राधिकारियों द्वारा किया जाएगा।

सारणी

क्र. सं.	पद (सचिवालय सुरक्षा बल में)	अनुशासनिक प्राधिकारी (केन्द्रीय औद्योगिक सुरक्षा बल में)	अपीलीय प्राधिकारी (केन्द्रीय औद्योगिक सुरक्षा बल में)	पुनरीक्षण प्राधिकारी (केन्द्रीय औद्योगिक सुरक्षा बल में)
(1)	(2)	(3)	(4)	(5)
1.	कांस्टेबल/दर्जी/अनुचर	कमांडेंट	उप महानिरीक्षक	महानिरीक्षक
2.	हेड कांस्टेबल/हेड कांस्टेबल ड्राइवर	कमांडेंट	उप महानिरीक्षक	महानिरीक्षक
3.	उप निरीक्षक	कमांडेंट	उप महानिरीक्षक	महानिरीक्षक
4.	निरीक्षक/सुबेदार मेजर	उप महानिरीक्षक	महानिरीक्षक	महानिदेशक

नोट : सचिवालय सुरक्षा बल के कामिकों के संबंध में सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1965 लागू रहेंगे।

[फाइल संख्या 12020/24/2001—बी सी]

एस. पी. शोखंदा, अवर सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 24th July, 2002

S.O. 2463.—Whereas, on security considerations, the command and control of the Secretariat Security Force (SSF), Ministry of Home Affairs was transferred to the Central Industrial Security Force (CISF) with effect from 8th January, 2001. The orders for merger of the Secretariat Security Force with the Central Industrial Security Force were issued on 30th April, 2001.

2. Now, therefore, in exercise of the powers conferred by clause (b) of sub-rule (2) of Rule 12, sub-rule (1) of Rule 24 and Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby directs that in respect of the posts in the Secretariat Security Force, Ministry of Home Affairs specified in column (2) of the Schedule to this Order, the authorities specified in columns (3), (4) and (5) shall exercise the powers of the Disciplinary Authority, Appellate Authority and Revisioning Authority respectively, with effect from the date of publication of this Order, and until further orders.

SCHEDULE

Serial No.	Posts (In Secretariat Security Force)	Disciplinary Authority (In Central Industrial Security Force)	Appellate Authority (In Central Industrial Security Force)	Revisioning Authority (In Central Industrial Security Force)
(1)	(2)	(3)	(4)	(5)
1.	Constable/Tailor/Follower.	Commandant	Deputy Inspector General.	Inspector General
2.	Head Constable/Head Constable Driver.	Commandant	Deputy Inspector General.	Inspector General
3.	Sub-Inspector	Commandant	Deputy Inspector General.	Inspector General
4.	Inspector/Subedar Major.	Deputy Inspector General.	Inspector General	Director General

Note: The Secretariat Security Force personnel will continue to be governed by the Central Civil Service (Classification, Control and Appeal) Rules, 1965.

[File No. 12020/24/2001—VC]
S. P. SHOKHANDA, Under Secy.

कार्मिक, लोक शिक्षण तथा पेंशन मंत्रालय

वित्त मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

(राजस्व विभाग)

नई दिल्ली, 26 जुलाई, 2002

(प्रवर्तन निदेशालय)

(विदेशी मुद्रा प्रबंधन अधिनियम)

नई दिल्ली, 22 जुलाई, 2002

का.आ. 2464:— केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केरल उच्च न्यायालय ओ.पी. संख्या 20605/2001 में दिनांक 09-04-2002 को दिए गए निर्णय के अनुसार केन्द्रीय अन्वेषण-ब्यूरो, अपराध अन्वेषण स्कंध एनाकुलम के अपराध संख्या 95/सी.आर. 2001, मूल रूप में अलुवा पुलिस स्टेशन के अपराध संख्या 51/2001 का भारतीय दंड संहिता की धारा 449, 302, 379, 380 और 461 के तहत अन्वेषण करने और उसी सम्बन्धों के क्रम में अथवा उन्हीं तथ्यों से उद्भूत किए गए उपर्युक्त वर्णित अपराधों से संबद्ध अथवा संसक्त दुष्प्रयामों, बुद्धिगमों और पड़यलों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार एतद्वारा सम्पूर्ण केरल राज्य का संबंध में करती है।

[संख्या 228/46/2002-ए.वी.डी.-II]

परमा नन्द, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel & Training)

New Delhi, the 26th July, 2002

S. O. 2464.—In exercise of the powers conferred by sub-section (1) of section 5 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government as directed by the High Court of Kerala in O. P. No. 20605/2001 vide order dated 9-4-2002, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Kerala for investigation of Crime No. 95/CR/2001 of C.B. CID, Ernakulam, originally crime no. 15/2001 of Aluva Police Station under sections 449, 302, 379, 380 and 461 of the Indian Penal Code and attempt, abetment and conspiracy in relation to or in connection with the aforementioned offences committed in the course of the same transaction arising out of the same facts.

[No. 228/46/2002-AVD-II]

PARMA NAND, Under Secy.

का.आ. 2465:—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में मुम्बई क्षेत्रीय कार्यालय, प्रवर्तन निदेशालय, मुम्बई को, जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[फा. सं. ई-1/7/हिन्दी 87-88]

एस. ए. अली, सहायक निदेशक (प्रशा.)

MINISTRY OF FINANCE

(Department of Revenue)

(Enforcement Directorate)

(Foreign Exchange Management Act)

New Delhi, the 22nd July, 2002

S.O. 2465.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for Official purposes of the Union), Rules, 1976, the Central Government hereby notifies the Mumbai Zonal Office, Enforcement Directorate, Mumbai, whereof more than 80 percent of staff have acquired working knowledge of Hindi.

[F. No. E 1/7/Hindi/87-88]

S. A. ALI, Asstt. Director (Admn.)

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

शुद्धि पत्र

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2466:— बैंक ऑफ बड़ौदा में बनारस स्टेट बैंक लिमिटेड के क्लियर के संबंध में भारत के राजपत्र (असाधारण) के भाग II खण्ड 3 (ii) में प्रकाशित भारत सरकार, वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग) द्वारा जारी 19 जून, 2002/29 ज्युलै, 1924 की अधिसूचना

का आ.सं. 549 फा.सं. 15/2/2002-बी ओ ए में निम्न-लिखित संशोधन किया जाता है।

संदर्भ	के स्थान पर	पढ़ें
क्रम संख्या. 1	पृष्ठ 27	पृष्ठ 29
क्रम सं. 2	पृष्ठ 29	पृष्ठ 27

[फा.सं. 15/2/2000-बी ओ ए]
डी. चौधरी, अवर सचिव

Department of Economic Affairs

(Banking Division)

CORRIGENDUM

New Delhi, the 16th July, 2002

S. O. 2466.—In the notification S. O. No. 549 F. No. 15/2/2002-BOA dated June 19, 2002/Jyaistha 29, 1924 issued by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) Published in the Gazette of India (Extraordinary) Part II Section 3 (ii) regarding merger of Benares State Bank Ltd. with Bank of Baroda, following modifications are made ;

Reference	In Place of	Read
Sl. No. (1)	Page 27	Page 29
Sl. No. (2)	Page 29	Page 27

[F. No. 15/1/96-BOA]

D. CHOUDHURY, Under Secy.

नई दिल्ली, 17 जुलाई, 2002

का.आ. 2467:—सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा निम्नलिखित सारणी के कालम (1) में उल्लिखित सरकार के राजपत्रित अधिकारी स्तर के समकक्ष अधिकारियों को उक्त अधिनियम के प्रयोजन के लिए सम्पदा अधिकारियों के रूप में नियुक्त करती है, जो उक्त सारणी के कालम (2) में उल्लिखित सरकारी स्थानों के संबंध में उक्त अधिनियम के द्वारा या उसके अधीन सम्पदा अधिकारियों को

प्रदत्त शक्तियों का प्रयोग करेंगे और उन्हें सौंपे गए कर्तव्यों को पूरा करेंगे:—

क्रमांक अधिकारी का पदनाम	सरकारी स्थानों की श्रेणियों और क्षेत्रधिकार की स्थानीय सीमाएं
(1)	(2)

- मुख्य महा प्रबंधक, भारतीय लघु उद्योग विकास बैंक, उत्तरी क्षेत्रीय कार्यालय, नई दिल्ली।
भारतीय लघु उद्योग विकास बैंक का अथवा उसके द्वारा या उसकी ओर से पट्टे पर लिया गया अथवा उसके प्रशासनिक नियंत्रण में संघ राज्य क्षेत्र षण्डीगढ़, राष्ट्रीय राजधानी क्षेत्र दिल्ली, हरियाणा, हिमाचल प्रदेश, जम्मू और उत्तरांचल राज्य में स्थित भूमि एवं भवनों सहित सरकारी स्थान।
- मुख्य महा प्रबंधक, भारतीय लघु उद्योग विकास बैंक, पश्चिमी क्षेत्रीय कार्यालय, मुम्बई।
भारतीय लघु उद्योग विकास बैंक का अथवा उसके द्वारा या उसकी ओर से पट्टे पर लिया गया अथवा उसके प्रशासनिक नियंत्रण में संघ राज्य क्षेत्र दादर एवं नागर हवेली, दमन एवं दीव, छत्तीसगढ़, गुजरात, गोवा मध्य प्रदेश एवं महाराष्ट्र राज्य में स्थित भूमि एवं भवनों सहित सरकारी स्थान।
- मुख्य महा प्रबंधक, भारतीय लघु उद्योग विकास बैंक, पूर्वी क्षेत्रीय कार्यालय कोलकाता।
भारतीय लघु उद्योग विकास बैंक का अथवा उसके द्वारा या उसकी ओर से पट्टे पर लिया गया अथवा उसके प्रशासनिक नियंत्रण में अरुणाचल प्रदेश, असम, बिहार, झारखंड, मणिपुर, मेघालय मिजोरम, नागालैंड उड़ीसा, सिक्किम, त्रिपुरा और पश्चिमी बंगाल राज्य में स्थित भूमि एवं भवनों सहित सरकारी स्थान।
- मुख्य महा प्रबंधक, भारतीय लघु उद्योग विकास बैंक, दक्षिणी क्षेत्रीय कार्यालय चेन्नई।
भारतीय लघु उद्योग विकास बैंक का अथवा उसके द्वारा या उसकी ओर से पट्टे पर लिया गया अथवा उसके प्रशासनिक नियंत्रण में संघ राज्य क्षेत्र अंडमान और निकोबार द्वीप समूह, लक्षद्वीप समूह, पांडिचेरी और

1	2
	प्रांथ प्रदेश, कर्नाटक, केरल और तमिलनाडु राज्य में स्थित भूमि एवं भवनों सहित सरकारी स्थान ।
[फा. सं. 17(8)/2002-आईएफ-II] पी. एम. सिराजुद्दीन, निदेशक	

New Delhi, the 17th July, 2002

S.O. 2467.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the Officers mentioned in Column (1) of the Table given below, being officers equivalent to the rank of a Gazetted Officer of Government, to be Estate Officers for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on the Estate Officers by or under the said Act in respect of the public premises specified in Column (2) of the said Table.

Sl. No.	Designation of the Officer	Categories of Public Premises and local limits of jurisdiction
1		2
(1)	Chief General Manager, Small Industries Development Bank of India, Northern Regional Office, New Delhi.	Public Premises including land and building belonging to, or taken on lease by or on behalf of and under the administrative control of Small Industries Development Bank of India situated within the Union Territory of Chandigarh, NCT of Delhi, States of Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Uttar Pradesh and Uttranchal.
(2)	Chief General Manager, Small Industries Development Bank of India, Western Regional Office, Mumbai.	Public Premises including land and buildings belonging to, or taken on lease by or on behalf and under the administrative control of Small Industries Development Bank of India situated within the Union Territories

1	2
	of Dadra and Nagar Haveli, Daman and Diu, States of Chhatisgarh, Gujarat, Goa, Madhya Pradesh and Maharashtra.
(3) Chief General Manager, Small Industries Development Bank of India, Eastern Regional Office, Kolkata.	Public Premises including land and buildings belonging to, or taken on lease by or on behalf of and under the administrative control of Small Industries Development Bank of India situated within the States of Arunachal Pradesh, Assam, Bihar, Jharkhand, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim Tripura and West Bengal.
(4) Chief General Manager, Small Industries Development Bank of India, Southern Regional Office, Chennai.	Public Premises including land and buildings belonging to, or taken on lease by or on behalf or under the administrative control of Small Industries Development Bank of India situated within the Union Territory of Andaman and Nicobar Islands, Lakshadweep Islands, Pondicherry and the States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu.

[F. No. 17(8)2002-IF-II]
P. M. SIRAJUDDIN, Director
नई दिल्ली, 19 जुलाई, 2002

का.आ. 2468.—भारतीय औद्योगिक विकास बैंक अधिनियम, 1964 (1964 का 18) की धारा 6 की उपधारा (1) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एनडब्ल्यू, वित्त मंत्रालय, आर्थिक कार्य विभाग, नई दिल्ली के सचिव (वित्तीय क्षेत्र) श्री डी.सी. गुप्ता, आईएएस (उड़ीसा : 67) को तत्काल प्रभाव से और अगले आदेश होते तक श्री एस.के. पुरकायस्थ के स्थान पर भारतीय औद्योगिक विकास औद्योगिक बैंक के निदेशक बोर्ड में निदेशक के रूप में नामित करती है ।

[फ. सं. 24(4)/2002-आईएफ-I]
एस.डी.एस. मिन्हास, अवर सचिव

New Delhi, the 19th July, 2002

S. O. 2468.—In exercise of the powers conferred by clause (c) of sub-section (I) of Section 6 of the Industrial Development Bank of India Act, 1964 (18 of 1964), the Central Government, hereby appoint Shri D. C. Gupta, IAS (Orissa ; 67), Secretary (Financial Sector), Ministry of Finance, Department of Economic Affairs, New Delhi as a Director on the Board of Directors of Industrial Development Bank of India with immediate effect and until further orders vice Shri S. K. Purkayastha.

[No. F. 24(4)/2002-IF-I
S. D. S. MINHAS, Under Secy.

नई दिल्ली, 22 जुलाई, 2002

का.आ. 2469.—बैंकारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा (1) के उपबंध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2004 तक दि बीद जिला केन्द्रीय सहकारी बैंक लि., बीद (महाराष्ट्र) पर लागू नहीं होंगे।

[फा.सं. 1(12)/2002-एसी]
मंगल मराण्डी, अवर सचिव

New Delhi, the 22nd July, 2002

S.O. 2469.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on recommendation of the Reserve Bank of India declares that the provisions of Sub-section (1) of Sec. 11 of the said Act shall not apply to The Beed District Central Co-operative Bank Ltd., Beed (Maharashtra) from the date of publication of this notification in the Official Gazette to 31st March, 2004.

[F. No. 1(12)/2002-AC]
MANGAL MARANDI, Under Secy.

नई दिल्ली, 24 जुलाई, 2002

का.आ. 2470.—पंजाब राज्य सरकार के केन्द्र सरकार से अनुरोध किया है कि राज्य वित्तीय निगम अधिनियम 1951 (1951 का 63) की धारा 32-छ के उपबंध (जिसे इसके बाद उक्त अधिनियम के रूप में उल्लेख किया गया है) राज्य सरकार द्वारा स्थापित संस्था अर्थात् पंजाब राज्य औद्योगिक और निवेश निगम लिमिटेड पर लागू होने चाहिए। इस संस्था का प्रयोजन औद्योगिक एकता का वित्तपोषण करना है।

अतः अब, उक्त अधिनियम की धारा 46 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय

सरकार, एतद्वारा निदेश देती है कि उक्त धारा 32-छ के उपबंध पंजाब राज्य औद्योगिक और निवेश निगम लिमिटेड पर लागू होंगे।

[फा.सं. 6(3) 2002-आई.एफ.-II]
पी.एन. सिराजुद्दीन, निदेशक

New Delhi, the 24th July, 2002

S. O. 2470.—Whereas the Government of Punjab have requested the Central Government that the provisions of section 32G of the State Financial Corporations Act, 1951 (63 of 1951) (hereinafter referred to as the said Act) may be made applicable to the Punjab State Industrial Development Corporation Limited, an institution established by the State Government which has for its object the financing of industrial concerns;

Now, therefore, in exercise of the powers conferred by sub-section (I) of section 46, of the said Act, the Central Government hereby directs that the provisions of section 32G shall apply to the said Punjab State Industrial Development Corporation Limited.

[F. No. 6 (3) 2002-IF-II]
P. M. SIRAJUDDIN, Director

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

अदेश

नई दिल्ली, 24 जुलाई, 2002

का.आ. 2471.—केन्द्रीय सरकार का मैसर्स बर्गर पेट्स इंडिया लिमिटेड, बर्गर हाऊस, 129, पार्क स्ट्रीट, कलकत्ता-700017 द्वारा उसे प्रस्तुत किए गए तकनीकी आंकड़े और जानकारी पर विचार करने के पश्चात् समाधान हो गया है कि तकनीकी कारणों से उक्त कंपनी के लिए बाट और माप मानक (पैक की गई वस्तुएं) नियम, 1977 की तृतीय अनुसूची में यथा विनिर्दिष्ट मानक मात्राओं में पेट्स के लिए उनकी कम्प्यूटरीकृत पूर्णतः स्वचालित डिस्पेंसिंग मशीन के माध्यम से परिदान के लिए पेट्स पूर्व पैक करना संभव नहीं है।

कम्प्यूटरीकृत स्वचालित डिस्पेंसिंग मशीन को आधार सामग्री की किसी पूर्व परिनिश्चित मात्रा में चयनित शेड तयार करने के लिए एक या एक से अधिक रजकों को मिलाने के लिए डिजाइन किया जाता है और यह पूर्व कार्यक्रमित कम्प्यूटरों द्वारा नियंत्रित होती है।

अतः अब केन्द्रीय सरकार, बाट और माप मानक (पैक की गई वस्तुएं) नियम, 1977 के नियम (5) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स बर्गर पेट्स इंडिया लिमिटेड, बर्गर हाऊस, 129, पार्क स्ट्रीट, कलकत्ता-700017 को, इस अधिसूचना के प्रकाशन की तारीख से

पांच वर्ष की अवधि के लिए, पेंट बनाने के लिए, पेंट की आधार सामग्री को, उक्त कम्प्यूटरीकृत मशीन के माध्यम से परिदान करने के लिए 450 मि.ली., 900 मि.ली., और 3.60 लीटर के आकार के पूर्व पैक करने के लिए, निम्नलिखित शर्तों के अधीन रहते हुए, प्राधिकृत करती है, अर्थात्:—

- (i) आधार सामग्री के डिब्बे पर शुद्ध अन्तर्वस्तु के साथ-साथ यह स्पष्ट रूप से उल्लिखित किया जाएगा कि यह पेंट या डिस्टेंपर के लिए आधार सामग्री है और तैयार पेंट ऐसे रंजकों के योग के पश्चात् प्राप्त होगा, जो कम्प्यूटरीकृत मशीन की सहायता से ब्योहारी द्वारा मिलाए जाएंगे।
- (ii) ब्योहारी के परिसर में, ब्योहारी उपभोक्ता की जानकारी के लिए सहज दृश्य स्थान पर उक्त कंपनी द्वारा यथा नियत, अपेक्षित शेड (शेडों) के लिए रंजक (रंजकों) के योग के पश्चात् पेंट की खुदरा विक्रय कीमत संपदशित करेगा।
- (iii) ब्योहारी, शेड का नाम, आधार सामग्री में रंजकों के योग के पश्चात् तैयार पेंट की शुद्ध अंतर्वस्तु, तैयार पेंट की विक्रय कीमत, पेंट की प्रति लीटर कीमत और तारीख के ब्योहारी के साथ ब्योहारी का पता और पहचान चिन्ह सहित एक नकद रसीद या मुद्रित कम्प्यूटर पर्ची जारी करेगा।
- (iv) उक्त कंपनी पेंट की शुद्ध अन्तर्वस्तु और शेड से संबंधित किसी भी शिकायत के लिए उत्तरदायी होगी।
- (v) उपरिखणित अनुज्ञात आकारों से संबंधित, आधार सामग्री की शुद्ध अन्तर्वस्तु की जांच पड़ताल निदेशक, अधिक माप विज्ञान या प्राधिकृत व्यक्ति द्वारा विनिर्दिष्ट प्रक्रिया के अनुसार विनिर्माण परिसर पर ही की जाएगी।
- (vi) आधारित पेंट की खुदरा विक्रय कीमत "अधिकतम खुदरा कीमत" (सभी कर सम्मिलित है) के रूप में आधारित पेंट के प्रत्येक पैकेज पर घोषित की जाएगी।

[फा. सं. डब्ल्यू एम 20(7)/2001]

एम्. नौटियाल, अपर सचिव

MINISTRY OF CONSUMER AFFAIRS, FOOD
AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

ORDER

New Delhi, the 24th July, 2002

S. O. 2471.—Whereas the Central Government, after considering the technical data and information furnished by M/s Berger Paints India Limited, Berger House, 129 Part Street, Calcutta-700017 is satisfied that for technical reasons it is not possible for the said company to pre-pack paints for delivery through their fully automatic computerised dispensing machine for paints in the standard quantities as specified in the Third

Schedule to the Standards of Weights and Measures (Packaged Commodities) Rules, 1977;

Whereas, the computerised automatic dispensing machine is designed to mix one or more colourants, to prepare the selected shade, and is controlled by a pre-programmed computer, in a pre-defined quantity of base material:

Now, therefore, in exercise of the powers conferred by the proviso to rule 5 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, the Central Government hereby authorises M/s Berger Paints India Limited, Berger House, 129 Part Street, Calcutta-700017 to pre-pack base material of paints in size of 450 ml, 900 ml and 360 litre for making paints to be delivered through the said computerised machine, for a period of five years from the date of publication of this notification, subject to the following conditions, namely:—

- (i) On the base material tin, in addition to net content, it shall be clearly mentioned that is base material for paint or distemper and the final paint shall be after addition of the colourants, which shall be added by the dealer with the help of the computerised machine.
- (ii) In the dealer's premises, the dealer shall display the retail sale price of the paint on addition of the colourant(s) for the shade(s) required, as fixed by the said company, at a conspicuous place for information of the consumers.
- (iii) The dealer shall issue a cash receipt or printed computer slip with address and identification mark of the dealer with details of name or shade, net content of finished paint after addition of colourants to the base material, the sale price of the finished paint, price per liter of the paint and date.
- (iv) The said company shall be responsible for any complaint in respect of net content and shade of the paint.
- (v) The net content checking shall be carried out of the base material at manufacturing premises with respect of the above mentioned permitted sizes by the Director Legal Metrology or the authorized person, according to the specified procedure.
- (vi) The retail sale price of the base paint in the form of Maximum Retail Price... (Inclusive of all taxes) shall be declared on every package containing the base paint.

[F. No. WM 20 (7)/2001]

S. NAUTIYAL, Addl. Secy.

मानव संसाधन विकास मंत्रालय

MINISTRY OF HUMAN RESOURCE
DEVELOPMENT

(माध्यमिक और उच्चतर शिक्षा विभाग)

(Department of Secondary and Higher Education)

नई दिल्ली, 2 जुलाई, 2002

New Delhi, the 2nd July, 2002

का.आ. 2472.—केन्द्र सरकार, राजभाषा नियम (संघ के शासकीय प्रयोजनों के लिए प्रयोग) 1976 के नियम 10 उप-नियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय के अन्तर्गत प्रारंभिक शिक्षा एवं साक्षरता विभाग, जिसके 80% से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

S.O. 2472.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976 the Central Govt. hereby notifies the Deptt. of Elementary Education and Literacy under the Ministry of Human Resource Development more than 80% staff of which has acquired working knowledge of Hindi.

[सं. 11011-9/2001-रा. भा. ए.]

[No. 11011-9/2001-OLU]

धनेश्वर प्रसाद बन्दूनी, निदेशक (रा. भा.)

D. P. BANDOONI, Director (OL)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 19 जुलाई, 2002

का.आ. 2473.—दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारतीय दंत चिकित्सा परिषद् से परामर्श के बाद केन्द्र सरकार उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित और संशोधन करती है नामतः—

उक्त अनुसूची के भाग-I में क्रम संख्या 21 और उससे संबंधित प्रविष्टियों के सामने निम्नलिखित प्रविष्टियां जोड़ी जायेंगी नामतः—

- | | | |
|----------------------------------|--|----------------------|
| 21. नागपुर विश्वविद्यालय, नागपुर | (i) दंत शल्य चिकित्सा स्नातक | बी. डी.एस. |
| | यह ग्रहंता विद्या शिक्षा प्रसारक मंडल डेंटल कॉलेज और रिसर्च सेंटर, | नागपुर विश्वविद्यालय |
| | नागपुर के बी.डी.एस. छात्रों के संबंध में एक मान्यता प्राप्त दंत चिकित्सा | नागपुर। |
| | ग्रहंता होगी यदि यह 7 फरवरी, 2001 को अथवा उसके बाद प्रदान | |
| | की गई होगी। | |

[संख्या बी. 12018/16/2002-पी.एम.एस.]

एस. के. राव, निदेशक (एम.ई.)

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 19th July, 2002

S.O. 2473.—In exercise of the power conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

In Part-I of the Schedule against Serial Number 21, and the entries relating thereto, the following entries shall be added, namely :—

- | | | |
|-----------------------------------|--|----------------------------|
| 21. Nagpur University,
Nagpur. | Bachelor of Dental Surgery | BDS |
| | The dental qualification shall be recognized | Nagpur University, Nagpur. |
| | qualifications in respect of BDS students | |
| | of Vidya Shikshan Prasarak Mandal's | |
| | Dental College & Research Centre, | |
| | Nagpur when granted on or after | |
| | 7th February, 2001. | |

[No. V.12018/16/2002-PMS]

S. K. RAO, Director (ME)

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2474.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में कृषि एवं सहकारिता विभाग कृषि मंत्रालय के अग्रणी सहकारी प्रबंध संस्थान राष्ट्रीय सहकारी प्रशिक्षण परिषद्, नई दिल्ली के निम्नलिखित कार्यालय को जिसके 80% कर्मचारीकुन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है अधिसूचित करती है :—

सहकारी प्रबंध संस्थान,
झालाना डूंगरी,
दूरदर्शन केन्द्र के पास,
जयपुर-302004

[संख्या 3-15/93-हिन्दी नीति]

सतीश चन्द्र, संयुक्त सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture & Cooperation)

New Delhi, the 15th July, 2002

S.O. 2474.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rule, 1975, the Central Government hereby notifies the following office of the National Council for Cooperative Training, New Delhi a Cooperative Management Institution under the control of the Department of Agriculture and Co-operation, Ministry of Agriculture, 80% staff have acquired the working knowledge of Hindi:—

Cooperative Management Institution,
Jhalana Dungi,
Near Door Darshan Kendra,
Jaipur-302 004

[No. 3-15/93-Hindi Neeti]

SATISH CHANDER, Jt. Secy.

2302 GI/2002--2.

पोत परिवहन मंत्रालय

नई दिल्ली, 23 जुलाई, 2002

का.आ. 2475.—केन्द्र सरकार, गोदी कामगार (रोजगार का विनियमन) नियमावली, 1962 के नियम 4 के उप नियम (2) के साथ पठित गोदी कामगार (रोजगार का विनियमन) अधिनियम 1948 (1948 का 9) की धारा 5-क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा श्री नानक चन्द, अवर सचिव, पोत परिवहन मंत्रालय, नई दिल्ली तथा कैप्टन एस. पाही को कलकत्ता गोदी श्रमिक बोर्ड का सदस्य नियुक्त करती है और दिनांक 26-12-2000 की अधिसूचना संख्या का.आ. 9 में निम्नलिखित संशोधन करती है :—

1. दिनांक 26-12-2000 की उक्त अधिसूचना सं. का.आ. 9 में “केन्द्र सरकार का प्रतिनिधित्व कर रहे सदस्य” शीर्षक के तहत क्रम संख्या-5 पर श्री एन. बारिक, अवर सचिव, पोत परिवहन मंत्रालय, प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि प्रतिस्थापित की जाए, अर्थात् :—

“श्री नानक चन्द, अवर सचिव, पोत परिवहन मंत्रालय, नई दिल्ली।”

2. दिनांक 26-12-2000 की उक्त अधिसूचना सं. का.आ. 9 में “गोदी कामगारों और नौवहन कम्पनियों का प्रतिनिधित्व करने वाले सदस्य” शीर्षक के तहत क्रम संख्या-5 पर कैप्टन एम. मर्जी, प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि प्रतिस्थापित की जाए, अर्थात् :—

“कैप्टन एम. पाही”

[फाइल सं. 13014/1/96-यू एल (एल)]

वी.के. अग्रवाल, अवर सचिव

MINISTRY OF SHIPPING

New Delhi, the 23rd July, 2002

S. O. 2475.—In exercise of the powers conferred by sub-section (1) of Section 5A of Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) read alongwith sub-rule (2) of rule 4 of the Dock Workers (Regulation of Employment) Rules, 1962, the Central Government hereby appoints Shri Nanak Chand, Under Secretary, Ministry of Shipping, New Delhi and Capt. S. Pahi as members of the Calcutta Dock Labour Board and makes the following amendment in the Notification of the Government of India,

Ministry of Shipping No. S. O. 9 dated 26-12-2000 :—

(i) In the said Notification No. S. O. 9 dated 26-12-2000, under the heading "members representing the Central Government", against Serial No. 5, for the entry Shri N. Barik, Under Secretary (L. I.) Ministry of Shipping, the following entry shall be substituted, namely :—

"Shri Nanak Chand, Under Secretary, Ministry of Shipping, New Delhi."

(ii) In the said Notification No. S. O. 9 dated 26-12-2000 under the heading "Members representing the Employers of Dock Workers and Shipping Companies", against Serial No. 5, for the entry Capt. S. Mukherjee, the following entry shall be substituted, namely :—

"Capt. S. Pahi"

[F. No. 13014/1/96-US (L)]

V. K. AGGARWAL, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 19 जुलाई, 2002

का.आ. 2476.—उम मंत्रालय के दिनांक 21-9-2001 के आदेश संख्या 809/1/2001-एफ (सी) के अनुक्रम में और चलचित्र की (प्रमाणन) नियम, 1983 के नियम 3 के साथ पठित चलचित्र की अधिनियम, 1952 (1952 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार श्री विजय आनन्द, अध्यक्ष, के.फि.प्र. बोर्ड के त्यागपत्र को तत्काल प्रभाव से मंजीकार करती है। श्री अरविंद त्रिवेदी, सदस्य, के.फि.प्र.बोर्ड नये अध्यक्ष की नियुक्ति अथवा अगले आदेशों तक, अध्यक्ष, के.फि.प्र. बोर्ड का कार्य देखेंगे।

[सं. 809/1/2001-एफ (सी)]

विश्वजीत सहाय, उप सचिव

MINISTRY OF INFORMATION AND

BROADCASTING

New Delhi, the 19th July, 2002

S.O. 2476.—In continuation of this Ministry's Order No. 809/1/2001-F(C) dated 21-09-2001 and in exercise of the powers conferred by sub-section

(1) of Section 3 of the Cinematograph Act, 1952 (37 of 1952) read with Rule 3 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to accept the resignation of Shri Vijay Anand, Chairman, CBFC with immediate effect. Shri Arvind Trivedi, Member, CBFC, Mumbai will look after the duties of Chairman, CBFC till the appointment of the New Chairman or until further orders.

[File No. 809/1/2001-F(C)]

VISHVAJIT SAHAY, Dy. Secy.

संचार और सूचना प्रौद्योगिकी मंत्रालय

(डाक विभाग)

नई दिल्ली, 24 जुलाई, 2002

का.आ. 2477.—राजभाषा नियम, (संघ के शासकीय प्रयोजनों के लिए प्रयोग), 1976 के नियम 10 के उप-नियम (4) के अनुसरण में केन्द्र सरकार डाक विभाग के निम्नलिखित अधीनस्थ कार्यालय को, जिसके 80 प्रतिशत कर्मचारियों (सुप घ कर्मचारियों को छोड़कर) ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. डाक जीवन बीमा निदेशालय,

चानक्यपुरी डाकघर भवन,

नई दिल्ली-110021

[संख्या 11018/1/2001-रा.भा.]

अशोक कुमार सचदेव, उप निदेशक (राजभाषा)

MINISTRY OF COMMUNICATIONS & IT

(Department of Posts)

New Delhi, the 24th July, 2002

S.O. 2477.—In pursuance of Rule 10(4) of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following subordinate office of the Department of Posts where 80% staff has acquired the working knowledge of Hindi :—

1. Directorate of Postal Life Insurance,
Chanakya Puri Post Office Complex,
New Delhi-110021.

[No. 11018/1/2001-OL]

A.K. SACHDEV, Dy. Director (OL)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 22 जुलाई, 2002

का. आ. 2478.— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का० आ० 391(अ) तारीख 02 अप्रैल, 2002 द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में, गुजरात राज्य में जोलवा ईपीएस से नहार क्लर एण्ड कोटिंग लिमिटेड पाइपलाइन परियोजना तक प्राकृतिक गैस के परिवहन के लिए गैस अथॉरिटी ऑफ इंडिया लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 25 अप्रैल, 2002 को उपलब्ध करा दी गई थी;

और उक्त पाइपलाइन बिछाने के सम्बन्ध में जनता से प्राप्त आक्षेपों पर सक्षम प्राधिकारी द्वारा विचार कर लिया गया है और उन्हें अननुज्ञात कर दिया गया है;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उस भूमि में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निदेश देती है कि पाइपलाइन बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख से, केन्द्रीय सरकार में निहित होने के बजाए, पाइपलाइन बिछाने का प्रस्ताव करने वाली गैस अथॉरिटी ऑफ इंडिया लिमिटेड में निहित होगा और तदुपरि, भूमि में ऐसे उपयोग का अधिकार इस प्रकार अधिरोपित निबंधनों और शर्तों के अधीन रहते हुए, सभी विल्लगनों से मुक्त, गैस अथॉरिटी ऑफ इंडिया लिमिटेड में निहित होगा।

अनुसूची

जिला	तहसील	गाँव	सेवे न०	असमय के लिए अर्जित क्षेत्रफल (हेक्टर में)
भरुच	वागसा	जोलवा	इन-साइड-जोलवा (इपीएस) 122 126 125 रोड 155 154	0-14-76 0-11-57 0-14-25 0-40-59 0-05-02 0-36-40 0-11-01
			कुल	01-33-60

[फा. अं. एल. 14014/23/02-जी. पी.]

स्वामी सिंह, निदेशक

Ministry of Petroleum and Natural Gas

New Delhi, the 22nd July, 2002

S. O. 2478.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 391(E), dated the 02nd April, 2002, issued under sub-section (C) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying pipeline for the transportation of natural gas through Jolwa EPS to Nahar Colour & Coating Limited Pipeline Project in the State of Gujarat by the Gas Authority of India Limited;

And whereas copies of the said Gazette notification were made available to the public on the 25th April, 2002;

And whereas the objections received from the public to the laying of the pipeline have been considered and disallowed by the competent authority;

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted its report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the land for laying the pipeline shall, instead of vesting in the Central Government, vest, on the date of the publication of the declaration, in the Gas Authority of India Limited, proposing to lay the pipeline and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in the Gas Authority of India, free from all encumbrances.

SCHEDULE

DISTRICT	TEHSIL	VILLAGE	SURVEY NO.	AREA TO BE ACQUIRED FOR ROU (IN HECTARES)
BHARUCH	VAGRA	JOLWA	In-side- Jolwa (EPS)	0-14-76
			122	0-11-57
			126	0-14-25
			125	0-40-59
			Road	0-05-02
			155	0-36-40
			154	0-11-01
			Total	01-33-60

[No. L. 14014/23/02-G.P.]
SWAMI SINGH, Director

नई दिल्ली, 24 जलाई, 2002

का. आ. 2479.— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्यांक का.आ. 2069 तारीख 09.08.2001, का.आ. 1261 तारीख 10.04.2002 का. आ. 1262 तारीख 10.04.2002 द्वारा उन अधिसूचनाओं से संलग्न अनुसूची में विनिर्दिष्ट भूमि में इंडियन ऑयल कॉरपोरेशन लि. द्वारा गुजरात राज्य में विरमगाम से हरियाणा राज्य में तहसील बहादुरगढ़ जिला झज्जर तक राजस्थान राज्य में घाकसू से होती हुई अपरिष्कृत तेल के परिवहन के लिए सलाया-मथुरा पाइप लाइन प्रणाली परियोजना के विरमगाम-चाकसू, घाकसू-पानीपत और चाकसू-मथुरा सेक्शनों के संयर्धन के कार्यान्वयन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी ;

और उक्त अधिसूचना की प्रतियाँ जनता को तारीख 27 अगस्त 2001 और 26 अप्रैल, 2002 को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इन अधिसूचनाओं से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में उपयोग का अधिकार अर्जित किया जाए;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाता है;

और अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख से, केन्द्रीय सरकार में निहित होने की बजाए सभी किल्लिंगमों से मुक्त, इंडियन ऑयल कॉरपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील : बहादुरगढ़

जिला : झज्जर

राज्य : हरियाणा

गाँव का नाम	हदबस्त संख्या	मुस्तवील संख्या	खसरा/किला संख्या	क्षेत्रफल		
				हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5	6	7
छारा	17		18	0	08	32
			17	0	11	38
			29/3	0	00	25
			30	0	03	79
			36	0	10	12
			37	0	07	59
			46	0	02	53
			47	0	03	79
			104	0	05	08
			105	0	01	26
			108	0	11	38
			107	0	03	79
			110	0	05	08
			112	0	01	26
			119	0	01	26
			125	0	00	00
			127	0	05	08
			128	0	08	32
			129	0	00	00
			132	0	08	32
			133	0	05	08
			6728/137	0	08	32
			138	0	08	32
			139	0	02	53
			1449	0	16	44
			1573	0	03	79
			1594	0	13	91
			1595	0	03	79
			1596	0	03	79
			1598	0	07	59
			6012/1617	0	02	53
			6013/1617	0	02	53
			1618	0	05	08
			1619	0	16	44
			1620	0	01	26
			1621	0	03	79
			1627	0	08	85
			1631/1	0	05	08
			1631/2	0	01	26
			1632	0	08	32
			5647/1634	0	08	85
			1689	0	00	00
			1690	0	05	08
			1691	0	01	26
			5658/1695	0	01	26
			1699	0	08	32
			1700	0	15	18

1	2	3	4	5	6	7
			1706	0	05	06
			1708	0	05	06
			1709	0	05	06
			1710	0	02	53
			1766	0	07	59
			1767	0	10	12
			1769	0	01	26
			1950	0	00	00
			6028/5674/2118	0	07	59
			6029/5674/2118	0	03	79
			5675/2118	0	03	79
			5676/2128	0	07	37
			2136	0	00	76
			5679/2139	0	06	32
			2140	0	06	32
			5697/2190	0	03	79
			5698/2190	0	03	79
			2187	0	06	32
			2188	0	06	32
			2189	0	06	32
			2193	0	01	26
			2194	0	18	97
			2195	0	08	85
			2196	0	00	00
			2200	0	01	26
			2213	0	01	26
			2215/2	0	13	91
			2216	0	07	59
			2224	0	00	51
			2240	0	01	26
			2241	0	03	79
			2242	0	08	85
			2243	0	01	26
			2245	0	08	85
			2246	0	10	12
			2247	0	01	26
			2267	0	11	38
			2268	0	06	32
अगरपुर	14	3	11	0	00	00
			20/1	0	06	58
			21/1	0	02	78
			21/2	0	03	29
		8	15	0	03	29
			16	0	06	58
			25	0	06	83
		9	1	0	06	83
			10	0	06	83
			11	0	03	29

1	2	3	4	5	6	7
		15	5/1	0	05	82
			5/2	0	00	51
			6	0	06	58
			14	0	00	25
			15/1	0	06	32
			15/2	0	00	51
			16	0	02	28
			17	0	04	05
			24/2	0	06	07
		21	4/1	0	05	82
			4/2	0	00	25
			7	0	06	32
			14	0	06	58
			17	0	05	56
			18	0	01	52
			23	0	06	58
			24	0	00	51
		26	3	0	06	83
			8	0	06	83
			13/1	0	01	77
			13/2	0	05	06
			18	0	06	83
			22	0	02	53
			23	0	03	54
		34	2/2	0	06	58
			9	0	06	83
			12	0	06	83
			19/1	0	06	58
			21	0	00	25
			22	0	06	58
		38	1/1	0	04	81
			2/1	0	01	52
			9/1	0	00	25
			10	0	05	06
			11	0	06	58
			20	0	06	83
			21	0	06	07
		48	5	0	01	26
			6	0	06	07
			15	0	06	83
			16	0	06	83
			25	0	06	32
		49	1/1	0	05	31

1	2	3	4	5	6	7
		52	5	0	06	58
			6	0	03	29
			7	0	01	01
			14	0	06	07
			17	0	06	83
			24	0	06	83
		60	4	0	05	58
			7	0	00	00
			84	0	00	25
			86	0	00	25
			89	0	00	25
			95	0	01	01
			96	0	01	01
			98	0	00	51
			103	0	00	51
			106	0	01	26
			118	0	00	51
			125	0	00	51
			128	0	00	25
			138	0	00	25
			147	0	05	58

[फा. सं. आर-25011/25/2001-ओ.आर-1]

एस.एस. केमवाल, अवर सचिव

New Delhi, the 24th July, 2002

S. O. 2479.— Whereas by the Notifications of the Government of India in the Ministry of Petroleum and Natural Gas, S.O. No. 2069 dated 09-08-2001, S.O. No. 1261 dated 10-04-2002, S.O. No. 1262 dated 10-04-2002, issued under Sub.- Sec. (1) of Sec. 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the Right of User in the Land specified in the Schedule appended to that Notifications for the purpose of laying pipeline for the transportation of Crude Oil from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan by the Indian Oil Corporation Limited for implementing the "Augmentation of Viramgam-Chaksu, Chaksu-Panipat and Chaksu-Mathura Sections of Salaya-Mathura Pipeline System Project" in Tehsil- Bahadurgarh, District- Jhajjar in Haryana State;

And, whereas, copies of the said Gazette Notifications were made available to the public on 27/08/2001 & 26/4/2002 respectively.

And, whereas, the Competent Authority has under Sub.-Sec. (1) of Sec. 6 of the said Act, has submitted his report to the Central Government;

And, whereas, the Central Government after considering the said report is satisfied that the Right of User in the Land specified in the Schedule appended to these Notifications should be acquired;

Now, therefore, in exercise of the powers conferred by Sub.-Sec. (1) of Sec. 6 of the said Act, the Central Government hereby declares that the Right of User in the Land specified in the Schedule appended to this Notification is acquired;

And, further in exercise of the powers conferred by Sub.-Sec. (4) of Sec. 6 of the said Act, the Central Government hereby directs that the Right of User in the said Land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

Schedule

Tehsil: Bahadurgarh

Dist: Jhajjar

State: Haryana

Name of Village	Hadbast No.	Mustatil No.	Khasra/Killa No.	Area		
				Hectare	Are	Sq.Mtr.
1	2	3	4	5	6	7
Chhara	17		16	0	06	32
			17	0	11	38
			29/3	0	00	25
			30	0	03	70
			36	0	10	12
			37	0	07	59
			46	0	02	53
			47	0	03	79
			104	0	05	06
			105	0	01	26
			106	0	11	38
			107	0	03	79
			110	0	05	06
			112	0	01	26
			119	0	01	26
			125	0	00	00
			127	0	05	06
			128	0	06	32
			129	0	00	00
			132	0	06	32
			133	0	05	06
			6726/137	0	06	32
			138	0	06	32
			139	0	02	53
			1449	0	16	44
			1573	0	03	79
			1594	0	13	91
			1595	0	03	79
			1596	0	03	79
			1598	0	07	59
			6012/1617	0	02	53
			6013/1617	0	02	53
			1618	0	05	06
			1619	0	16	44
			1620	0	01	26
			1621	0	03	79
			1627	0	08	85
			1631/1	0	05	06
			1631/2	0	01	26
			1632	0	06	32
			5647/1634	0	08	85
			1689	0	00	00
			1690	0	05	06
			1691	0	01	26
			5658/1695	0	01	26
			1699	0	06	32
			1700	0	15	18

1	2	3	4	5	6	7
			1708	0	05	08
			1708	0	05	08
			1709	0	05	08
			1710	0	02	53
			1766	0	07	59
			1767	0	10	12
			1769	0	01	26
			1950	0	00	00
			6028/5674/2118	0	07	59
			6029/5674/2118	0	03	79
			5675/2118	0	03	79
			5676/2128	0	07	37
			2136	0	00	76
			5679/2139	0	08	32
			2140	0	08	32
			5697/2190	0	03	79
			5698/2190	0	03	79
			2187	0	06	32
			2188	0	06	32
			2189	0	06	32
			2193	0	01	26
			2194	0	18	97
			2195	0	08	85
			2196	0	00	00
			2200	0	01	26
			2213	0	01	26
			2215/2	0	13	91
			2216	0	07	59
			2224	0	00	51
			2240	0	01	26
			2241	0	03	79
			2242	0	06	85
			2243	0	01	26
			2245	0	08	85
			2246	0	10	12
			2247	0	01	26
			2287	0	11	38
			2268	0	06	32
Agarpur	14	3	11	0	00	00
			20/1	0	06	58
			21/1	0	02	78
			21/2	0	03	29
		8	15	0	03	29
			16	0	06	58
			25	0	06	83
		9	1	0	06	83
			10	0	06	83
			11	0	03	29

1	2	3	4	5	6	7
		15	5/1	0	05	82
			5/2	0	00	51
			6	0	06	58
			14	0	00	25
			15/1	0	06	32
			15/2	0	00	51
			16	0	02	28
			17	0	04	05
			24/2	0	06	07
		21	4/1	0	05	82
			4/2	0	00	25
			7	0	06	32
			14	0	06	58
			17	0	05	56
			18	0	01	52
			23	0	06	58
			24	0	00	51
		26	3	0	06	83
			8	0	06	83
			13/1	0	01	77
			13/2	0	05	06
			18	0	06	83
			22	0	02	53
			23	0	03	54
		34	2/2	0	06	58
			9	0	06	83
			12	0	06	83
			19/1	0	06	58
			21	0	00	25
			22	0	06	58
		38	1/1	0	04	81
			2/1	0	01	52
			9/1	0	00	25
			10	0	05	06
			11	0	06	58
			20	0	06	83
			21	0	06	07
		48	5	0	01	26
			6	0	06	07
			15	0	06	83
			16	0	06	83
			25	0	06	32
		49	1/1	0	05	31
		52	5	0	06	58
			6	0	03	29
			7	0	01	01
			14	0	06	07
			17	0	06	83
			24	0	06	83

1	2	3	4	5	6	7
		60	4	0	05	56
			7	0	00	00
			84	0	00	25
			86	0	00	25
			89	0	00	25
			95	0	01	01
			96	0	01	01
			98	0	00	51
			103	0	00	51
			106	0	01	26
			118	0	00	51
			125	0	00	51
			128	0	00	25
			138	0	00	25
			147	0	05	58

[No. R-25011/25/2001-O.R.-I]
S.S. KEMWAL, Under Secy.

नई दिल्ली, 24 जुलाई, 2002

का. आ. 2480.— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्यांक का.आ. 1622 तारीख 09.07.2001, का.आ. 2842 तारीख 10.10.2001 का. आ. 1384 और 1385 तारीख 24.04.2002 द्वारा उन अधिसूचनाओं से संलग्न अनुसूची में विनिर्दिष्ट भूमि में इंडियन ऑयल कॉर्पोरेशन लि. द्वारा गुजरात राज्य में विरमगाम से हरियाणा राज्य में तहसील पानीपत जिला पानीपत तक राजस्थान राज्य में चाकसू से होती हुई अपरिष्कृत तेल के परिवहन के लिए सलाया-मथुरा पाइप लाइन प्रणाली परियोजना के विरमगाम-चाकसू, चाकसू-पानीपत और चाकसू-मथुरा सेक्शनों के संवर्धन के कार्यान्वयन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी ;

और उक्त राजपत्र अधिसूचनाओं की प्रतियाँ जनता को क्रमशः तारीख 25 जुलाई, 2001, 29 अक्टूबर, 2001 और 17 मई, 2002 को उपलब्ध करा दी गई थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इन अधिसूचनाओं से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट उक्त भूमि में उपयोग के अधिकार का अर्जन किया जाता है;

और अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निदेश देती है कि उक्त भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख से, केन्द्रीय सरकार में निहित होने के बजाए सभी विल्लंगमों से मुक्त, इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील: पानीपत

जिला: पानीपत

राज्य: हरियाणा

गौव का नाम	हदबस्त संख्या	मुस्ततील संख्या	खसरा/किला संख्या	क्षेत्रफल		
				हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5	6	7
कासखा	41	4	20	0	02	78
		18	15	0	06	83
			16/2	0	03	54
			17	0	03	29
			24/2	0	06	83
		28	4	0	06	83
			7/1	0	02	78
			7/2	0	04	05
			14	0	06	83
			17	0	03	54
			18	0	03	04
			23	0	06	83
		44	3	0	03	54
			22/2	0	04	05
		59	2/1/2	0	00	00
			2/2/2	0	01	26
			2/3/2	0	00	51
			9/2	0	06	07
			11	0	00	25
			12/2	0	06	32
			19/2	0	01	77
			20	0	04	81
			21	0	06	58
		77	1	0	06	32
			10	0	06	32
			11	0	02	28
		78	6/1	0	00	00
			15	0	04	05
			16	0	06	83
			25	0	06	58
		89	5	0	05	31
			6	0	06	83
			14	0	01	77
			15	0	04	81
			16	0	00	51

1	2	3	4	5	6	7
			17	0	06	32
			24	0	06	58
		108	4	0	06	83
			7	0	06	32
			13/3	0	00	25
			14	0	05	06
			17	0	01	01
			18	0	04	81
			23	0	06	83
		116	3	0	06	83
			8	0	06	83
			13	0	06	32
			18	0	04	05
			19	0	03	04
			22	0	06	83
			23/1	0	00	00
		129	2	0	06	83
			9	0	06	83
			12	0	06	83
			19	0	06	32
			21	0	03	54
			22/1	0	01	26
			22/2	0	00	25
		135	1	0	06	83
			10	0	02	53
			21	0	00	26
		142	1	0	01	01
		143	5	0	04	80
			155	0	00	76
			159	0	01	77
			163	0	03	04
			180	0	01	26
			181	0	01	52
			241	0	00	76
			242/2	0	01	77
			258	0	00	51
			261/2	0	00	51
			262	0	00	25
			282	0	00	25
			283	0	02	28
			284	0	00	51
			285	0	00	51
			683	0	00	51
लोहारी	42	9	24	0	01	77

1	2	3	4	5	6	7
		10	4	0	06	83
			7	0	06	83
			13	0	00	00
			14	0	06	32
			17	0	00	00
			18	0	04	55
			23	0	06	32
	26		3	0	06	83
			8	0	06	32
			12	0	00	00
			13	0	05	31
			18	0	00	25
			19	0	02	53
			22	0	06	32
	27		2	0	06	83
			9	0	06	83
			11/2	0	00	00
			12/1	0	03	79
			12/2	0	03	04
			19	0	02	02
			20	0	04	55
			21	0	06	58
	44		15	0	00	00
			16	0	04	05
			25/2	0	06	58
	45		1	0	06	83
			10	0	06	83
			11	0	06	58
			20	0	02	28
	50		5/1/1/1	0	00	00
			5/1/1/2	0	04	30
			5/1/2	0	00	76
			5/2	0	01	26
			6/1	0	03	29
			6/2	0	03	29
			14	0	00	00
			15	0	06	83
			16	0	02	78
			17	0	03	54
			24	0	06	58
	68		4	0	06	83
			7	0	05	82
			14	0	06	07
			17	0	03	04
			18/1/1	0	03	54
			23/2	0	03	04
			23/3	0	03	54
			24	0	00	00

	2	3	4	5	6	7
		75	3	0	08	07
			8/1	0	08	58
			13	0	04	05
			18	0	03	54
			19/1/1	0	03	04
			19/1/2	0	00	51
			22	0	08	83
			26	0	02	78
		94	2	0	06	32
			9	0	06	58
			12	0	06	58
			19/2	0	02	78
			20	0	04	05
			21	0	06	58
		101	1	0	05	82
			10/1	0	03	04
			10/2	0	03	79
			11	0	05	82
			145	0	02	02
			189	0	03	54
			199	0	00	51
			202	0	00	51
			203	0	00	51
			744	0	04	05
			752	0	00	51
			792	0	00	51
सुताना	23	37	9	0	03	54
			11	0	00	51
			12	0	06	07
			19	0	01	26
			20	0	04	81
			21	0	06	83
		63	1	0	06	58
			10	0	06	83
			11	0	03	54
			20	0	00	00
		64	15/2	0	00	25
			16	0	04	05
			25	0	06	58
		66	5	0	02	78
			226	0	02	28
			803	0	00	51
			814	0	02	53
			815	0	00	51

1	2	3	4	5	6	7
उन्टला	44	11	14	0	02	53
			17	0	06	83
			23	0	00	76
			24	0	06	07
		14	3	0	06	32
			4	0	00	51
			8	0	06	58
			13	0	03	54
		27	10	0	00	25
			20	0	06	57
			21	0	06	01
		31	1	0	03	29
			10	0	00	00
		32	5	0	01	77
			6	0	06	83
			15	0	06	83
			16/3	0	05	82
			25/2	0	00	25
		42	13	0	04	55
			14/1	0	00	25
			18	0	06	58
			23	0	01	77
		49	8	0	07	84
			13	0	06	58
			18	0	06	58
			23/1	0	03	04
			23/2	0	03	79
		62	3	0	06	32
			8	0	06	83
			13	0	06	58
			18	0	06	58
			19	0	00	51
			22	0	02	02
			23	0	05	06
		66	2	0	03	54
			3	0	03	54
			8	0	02	53
			9	0	04	55
			12	0	06	07
			13	0	01	52
			19	0	06	58
			22	0	06	58
		76	2	0	06	83
			9	0	03	04
			81	0	15	01
			82	0	18	00

1	2	3	4	5	6	7
			92	0	01	52
			98	0	01	52
			258	0	02	02
			277/3	0	00	51
			306	0	00	51
			307/3	0	00	51
			312	0	00	51
आसन खुर्द	22	5	5	0	00	25
			6	0	06	32
			15	0	06	83
			16	0	06	32
			24/2	0	01	77
			25/1	0	01	01
			25/2	0	04	05
		10	4/1	0	01	26
			4/2	0	03	79
			5/1/1	0	00	00
			7	0	06	83
			14	0	06	32
			17	0	06	83
			23/2	0	00	51
			24/1	0	06	58
		17	3	0	06	07
			4	0	01	25
			8	0	07	09
			13	0	04	31
			14	0	00	51
			18	0	06	83
			23	0	06	83
		24	2	0	02	28
			3	0	04	05
			8	0	00	25
			9	0	02	78
			19/2	0	02	28
		34	2	0	00	25
			9	0	05	82
			10	0	00	76
			11	0	08	09
			12	0	00	51
			20	0	03	04
		35	16	0	05	82
			24/1	0	02	02
			24/2	0	01	01
			25	0	05	06
		38	4	0	02	28
			7	0	00	50
			14	0	00	25

1	2	3	4	5	6	7
			84	0	01	52
			114	0	00	51
			115	0	00	51
			117	0	00	25
			132	0	00	51
			283	0	00	51
			291	0	00	51
संस्कृत कला	21	59	4	0	04	55
			7	0	06	83
			13	0	02	78
			14	0	04	05
			17	0	00	00
			18/1	0	06	83
			23	0	06	83
		61	3	0	06	83
			8	0	06	83
			12	0	00	25
			13/1	0	02	78
			13/2	0	01	52
			18	0	02	28
			19	0	04	55
			22	0	06	83
		82	2	0	06	83
			9	0	06	83
			12	0	06	83
			19/3	0	05	82
			20	0	01	01
			21	0	06	07
			22	0	00	76
		84	16/1	0	00	00
			25	0	03	04
		85	1	0	03	54
			10/2	0	00	76
			11/2	0	02	27
			20	0	06	32
			21	0	02	02
		107	5	0	04	05
			187	0	01	77
			202	0	00	51
			203	0	00	51
			204	0	00	51
			205	0	00	51
			220	0	00	51
			308	0	00	51
			310	0	00	51
			883	0	00	76
खण्डरा	10	36	21	0	03	79

1	2	3	4	5	6	7
		37	1	0	06	83
			10	0	05	06
			11	0	00	00
		38	6	0	01	77
			15	0	06	58
			16	0	06	83
			25/1	0	04	05
			25/2	0	03	04
		58	5	0	06	83
			6	0	05	58
			7	0	01	01
			14	0	06	07
			15	0	00	76
			17	0	06	83
			24	0	06	83
		60	4	0	04	05
बाल जाटान	11	20	18	0	04	55
			23/1	0	13	41
			23/2	0	01	52
		141	7	0	06	83
			14	0	06	83
			17	0	06	83
			23	0	00	51
			24	0	06	58
		149	3/2	0	05	56
			4	0	01	26
			8	0	06	83
			13	0	06	83
			18	0	06	83
			23	0	06	83
		160	2	0	01	01
			3	0	04	81
			8	0	00	25
			9	0	05	82
			12	0	06	83
			19	0	06	83
			22	0	06	83
		163	1	0	00	25
			2	0	06	32
			9	0	02	02
			10	0	04	55
			11	0	06	83
			20	0	06	83
			21	0	02	53

1	2	3	4	5	6	7
			191	0	01	52
			287	0	01	77
			294	0	01	01
			296	0	00	51

[फा. सं. आर-25011/16/2001-ओ.आर-1]

एस.एस. केमवाल, अवर सचिव

New Delhi, the 24th July, 2002

S. O. 2480.— Whereas by the Notification of the Government of India in the Ministry of Petroleum and Natural Gas, S.O. No. 1622 dated 9-07-2001, S.O. No. 2842 dated 10-10-2001 & S.O. No. 1384 & 1385 dated 24-4-2002 issued under Sub.-Sec. (1) of Sec. 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the Right of User in the Land specified in the Schedule appended to those Notifications for the purpose of laying pipeline for the transportation of Crude Oil from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan by the Indian Oil Corporation Limited for implementing the "Augmentation of Viramgam-Chaksu, Chaksu-Panipat and Chaksu-Mathura Sections of Salaya-Mathura Pipeline System Project" in Tehsil- Panipat, District- Panipat in Haryana State;

And, whereas, copies of the said Gazette Notifications were made available to the public on 25/7/2001, 29/10/2001 & 17/5/2002 respectively;

And, whereas, the Competent Authority has under Sub.-Sec. (1) of Sec. 6 of the said Act, has submitted his report to the Central Government;

And, whereas, the Central Government after considering the said report is satisfied that the Right of User in the Land specified in the Schedule appended to these Notifications should be acquired;

Now, therefore, in exercise of the powers conferred by Sub.-Sec. (1) of Sec. 6 of the said Act, the Central Government hereby declares that the Right of User in the Land specified in the Schedule appended to this Notification is acquired;

And, further in exercise of the powers conferred by Sub.-Sec. (4) of Sec. 6 of the said Act, the Central Government hereby directs that the Right of User in the said Land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

Schedule Annexed

Schedule**Tehsil: Panipat****Dist: Panipat****State: Haryana**

Name of Village	Hadbast No.	Mustatil No	Khasra/ Killa No	Area		
				Hectare.	Are	Sq.Mtr
1	2	3	4	5	6	7
Kalkha	41	4	20	0	02	78
		18	15	0	06	83
			16/2	0	03	54
			17	0	03	29
			24/2	0	06	83
		28	4	0	06	83
			7/1	0	02	78
			7/2	0	04	05
			14	0	06	83
			17	0	03	54
			18	0	03	04
			23	0	06	83
		44	3	0	03	54
			22/2	0	04	05
		59	2/1/2	0	00	00
			2/2/2	0	01	26
			2/3/2	0	00	51
			9/2	0	06	07
			11	0	00	25
			12/2	0	06	32
			19/2	0	01	77
			20	0	04	81
			21	0	06	58
		77	1	0	06	32
			10	0	06	32
			11	0	02	28
		78	6/1	0	00	00
			15	0	04	05
			16	0	06	83
			25	0	06	58
		89	5	0	05	31
			6	0	06	83
			14	0	01	77
			15	0	04	81
			16	0	00	51
			17	0	06	32
			24	0	06	58
		108	4	0	06	83
			7	0	06	32
			13/3	0	00	25
			14	0	05	06
			17	0	01	01

1	2	3	4	5	6	7
			18	0	04	81
			23	0	06	83
		116	3	0	06	83
			8	0	06	83
			13	0	06	32
			18	0	04	05
			19	0	03	04
			22	0	06	83
			23/1	0	00	00
		129	2	0	06	83
			9	0	06	83
			12	0	06	83
			19	0	06	32
			21	0	03	54
			22/1	0	01	26
			22/2	0	00	25
		135	1	0	06	83
			10	0	02	53
			21	0	00	26
		142	1	0	01	01
		143	5	0	04	80
			155	0	00	76
			159	0	01	77
			163	0	03	04
			180	0	01	26
			181	0	01	52
			241	0	00	76
			242/2	0	01	77
			258	0	00	51
			261/2	0	00	51
			262	0	00	25
			282	0	00	25
			283	0	02	28
			284	0	00	51
			285	0	00	51
			683	0	00	51
Lohari	42	9	24	0	01	77
		10	4	0	06	83
			7	0	06	83
			13	0	00	00
			14	0	06	32
			17	0	00	00
			18	0	04	55
			23	0	06	32
		26	3	0	06	83
			8	0	06	32

1	2	3	4	5	6	7
			12	0	00	00
			13	0	05	31
			18	0	00	25
			19	0	02	53
			22	0	06	32
	27		2	0	06	83
			9	0	06	83
			11/2	0	00	00
			12/1	0	03	79
			12/2	0	03	04
			19	0	02	02
			20	0	04	55
			21	0	06	58
	44		15	0	00	00
			16	0	04	05
			25/2	0	06	58
	45		1	0	06	83
			10	0	06	83
			11	0	06	58
			20	0	02	28
	50		5/1/1/1	0	00	00
			5/1/1/2	0	04	30
			5/1/2	0	00	76
			5/2	0	01	26
			6/1	0	03	29
			6/2	0	03	29
			14	0	00	00
			15	0	06	83
			16	0	02	78
			17	0	03	54
			24	0	06	58
	68		4	0	06	83
			7	0	05	82
			14	0	06	07
			17	0	03	04
			18/1/1	0	03	54
			23/2	0	03	04
			23/3	0	03	54
			24	0	00	00
	75		3	0	06	07
			8/1	0	06	58
			13	0	04	05
			18	0	03	54
			19/1/1	0	03	04
			19/1/2	0	00	51
			22	0	06	83
			26	0	02	78

	2	3	4	5	6	7
		94	2	0	06	32
			9	0	06	58
			12	0	06	58
			19/2	0	02	78
			20	0	04	05
			21	0	06	58
		101	1	0	05	82
			10/1	0	03	04
			10/2	0	03	79
			11	0	05	82
			145	0	02	02
			189	0	03	04
			199	0	00	51
			202	0	00	51
			203	0	00	51
			744	0	04	05
			752	0	00	51
			792	0	00	51
Sutana	23	37	9	0	03	54
			11	0	00	51
			12	0	06	07
			19	0	01	26
			20	0	04	81
			21	0	06	83
		63	1	0	06	58
			10	0	06	83
			11	0	03	54
			20	0	00	00
		64	15/2	0	00	25
			16	0	04	05
			25	0	06	58
		66	5	0	02	78
			226	0	02	28
			803	0	00	51
			814	0	02	53
			815	0	00	51
Untala	44	11	14	0	02	53
			17	0	06	83
			23	0	00	76
			24	0	06	07
		14	3	0	06	32
			4	0	00	51
			8	0	06	58
			13	0	03	54

1	2	3	4	5	6	7
		27	10	0	00	25
			20	0	06	83
			21	0	06	83
		31	1	0	03	29
			10	0	00	00
		32	5	0	01	77
			6	0	06	83
			15	0	06	83
			16/3	0	05	82
			25/2	0	00	25
		42	13	0	04	55
			14/1	0	00	25
			18	0	06	58
			23	0	01	77
		49	8	0	07	84
			13	0	06	58
			18	0	06	58
			23/1	0	03	04
			23/2	0	03	79
		62	3	0	02	32
			8	0	06	83
			13	0	06	58
			18	0	06	58
			19	0	00	51
			22	0	02	02
			23	0	05	06
		66	2	0	03	54
			3	0	03	54
			8	0	02	53
			9	0	04	55
			12	0	06	07
			13	0	01	52
			19	0	06	58
			22	0	06	58
		76	2	0	06	83
			9	0	03	04
			81	0	15	93
			82	0	18	48
			92	0	01	52
			98	0	01	52
			258	0	02	02
			277/3	0	00	51
			306	0	00	51
			307/3	0	00	51
			312	0	00	51

1	2	3	4	5	6	7
Asan Khurad	22	5	5	0	00	25
			6	0	06	32
			15	0	06	83
			16	0	06	32
			24/2	0	01	77
			25/1	0	01	01
			25/2	0	04	05
		10	4/1	0	01	26
			4/2	0	03	79
			5/1/1	0	00	00
			7	0	06	83
			14	0	06	32
			17	0	06	83
			23/2	0	00	51
			24/1	0	06	58
		17	3	0	06	07
			4	0	01	26
			8	0	07	09
			13	0	04	81
			14	0	00	51
			18	0	06	83
			23	0	06	83
		24	2	0	02	28
			3	0	04	05
			8	0	00	25
			9	0	02	78
			19/2	0	02	28
		34	2	0	00	25
			9	0	05	82
			10	0	00	76
			11	0	08	09
			12	0	00	51
			20	0	03	04
		35	16	0	05	82
			24/1	0	02	02
			24/2	0	01	01
			25	0	05	06
		38	4	0	02	28
			7	0	00	50
			14	0	00	25
			84	0	01	52
			114	0	00	51
			115	0	00	51
			117	0	00	25
			132	0	00	51
			283	0	00	51
			291	0	00	51

1	2	3	4	5	6	7
Asan Kalan	21	59	4	0	04	55
			7	0	06	83
			13	0	02	78
			14	0	04	05
			17	0	00	00
			18/1	0	06	83
			23	0	06	83
		61	3	0	06	83
			8	0	06	83
			12	0	00	25
			13/1	0	02	78
			13/2	0	01	52
			18	0	02	28
			19	0	04	55
			22	0	06	83
		82	2	0	06	83
			9	0	06	83
			12	0	06	83
			19/3	0	05	82
			20	0	01	01
			21	0	06	07
			22	0	00	76
		84	16/1	0	00	00
			25	0	03	04
		85	1	0	03	54
			10/2	0	00	76
			11/2	0	02	27
			20	0	06	32
			21	0	02	02
		107	5	0	04	05
			187	0	01	77
			202	0	00	51
			203	0	00	51
			204	0	00	51
			205	0	00	51
			220	0	00	51
			308	0	00	51
			310	0	00	51
			883	0	00	76
Khandra	10	36	21	0	03	79
		37	1	0	06	83
			10	0	05	06
			11	0	00	00
		38	6	0	01	77
			15	0	06	58
			16	0	06	83

1	2	3	4	5	6	7
			25/1	0	04	05
			25/2	0	03	04
		58	5	0	06	83
			6	0	05	58
			7	0	01	01
			14	0	06	07
			15	0	00	76
			17	0	06	83
			24	0	06	83
	60		4	0	04	05
Baljatan	20		18	0	04	55
			23/1	0	13	41
			23/2	0	01	52
		141	7	0	06	83
			14	0	06	83
			17	0	06	83
			23	0	00	51
			24	0	06	58
		149	3/2	0	05	56
			4	0	01	26
			8	0	06	83
			13	0	06	83
			18	0	06	83
			23	0	06	83
		160	2	0	01	01
			3	0	04	81
			8	0	00	25
			9	0	05	82
			12	0	06	83
			19	0	06	83
			22	0	06	83
		163	7	0	00	25
			2	0	06	32
			9	0	02	02
			10	0	04	55
			11	0	06	83
			20	0	06	83
			21	0	02	53
			191	0	01	52
			287	0	01	77
			294	0	01	01
			296	0	00	51

[No. R-25011/16/2001-O.R.-I]
S.S. KEMWAL, Under Secy.

नई दिल्ली, 24 जुलाई, 2002

का. आ. 2481.— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्यांक का.आ. 1536 तारीख 03.07.2001, का.आ. 1382 और 1383 तारीख 24.04.2002 द्वारा उन अधिसूचनाओं से संलग्न अनुसूची में विनिर्दिष्ट भूमि में इंडियन ऑयल कॉरपोरेशन लि. द्वारा गुजरात राज्य में खिरमगाम से हरियाणा राज्य में तहसील इसराना जिला पानीपत तक राजस्थान राज्य में चाकसू से होती हुई अपरिष्कृत तेल के परिवहन के लिए सलाया-मथुरा पाइप लाइन प्रणाली परियोजना के खिरमगाम-चाकसू, चाकसू-पानीपत और चाकसू-मथुरा संक्शनों के संवर्धन के कार्यान्वयन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी ;

और उक्त राजपत्र अधिसूचनाओं की प्रतियाँ जनता को तारीख 20 जुलाई, 2001 और 17 मई, 2002 को उपलब्ध करा दी गई थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इन अधिसूचनाओं से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाता है;

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निदेश देती है कि उक्त भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए सभी विल्लिंगमों से मुक्त, इंडियन ऑयल कॉरपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील: इसराना

जिला: पानीपत

राज्य: हरियाणा

शेख का नाम	हदबस्त संख्या	मुस्ततिल संख्या	खसरा/ किला संख्या	क्षेत्रफल		
				हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5	6	7
कुआँन लाखू	86	72	18	0	01	52
			22	0	01	01
			23/1	0	03	54
			23/2	0	01	77
		75	2	0	06	07
			3	0	00	76
			9	0	06	07
			12	0	06	58
			19/1	0	02	02
			19/2	0	05	56
			22	0	06	58
		99	1/2	0	01	77
			2	0	05	06
			10/1	0	06	58
			11/1	0	01	77
			11/2	0	05	56
			20	0	06	58
			21/1/1	0	04	55
			21/2	0	00	76
		102	1	0	06	58
			926	0	00	51
कायब	91	22	2	0	02	78
			9/1	0	02	02
			9/2	0	05	06
			11/1	0	00	00
			11/2	0	00	00
			12/1	0	06	32
			12/2	0	00	51
			19/2/1	0	01	77
			20	0	05	56
			21/2	0	06	32
		32	16	0	02	78
			25/2	0	05	06
		33	1	0	06	83
			10	0	06	58
			11	0	06	83
			20	0	04	05
		37	5/2	0	06	58
			6/1/1/1	0	01	26
			6/1/1/2	0	00	76
			6/2/1	0	01	52
			6/2/2	0	03	04
			15	0	06	83

1	2	3	4	5	6	7
			16	0	04	81
			17	0	01	77
			24	0	06	58
			25	0	00	25
		46	4	0	06	32
			7	0	06	83
			14	0	06	83
			17/1	0	06	58
			17/2	0	00	51
			24/1	0	02	28
			68	0	01	26
			85	0	00	51
			111	0	00	51
			115	0	00	51
			116	0	00	51
			123	0	01	77
राहपुर	89	3	23	0	03	79
		16	3	0	06	58
			8	0	06	58
			13	0	06	32
			18/1	0	01	01
			18/2	0	02	78
			19	0	04	30
			22	0	06	32
		20	3/2	0	00	76
			14	0	03	79
			17	0	06	58
			24	0	06	58
		33	4	0	06	58
			7/2	0	04	05
			8	0	03	04
			13/1	0	03	54
			13/2/2	0	03	04
			18/1	0	01	52
			18/2	0	04	81
			23/1	0	00	51
			23/2	0	06	07
		36	3	0	06	58
			8	0	06	58
			9	0	00	00
			12	0	03	04
			13	0	04	05
			18	0	00	00
			19	0	06	58
			22	0	06	83
		50	2	0	06	58
			9	0	06	58
			11	0	00	00
			12	0	06	07

1	2	3	4	5	6	7
			19	0	03	04
			20	0	04	05
			21/2	0	06	58
	51		1	0	06	58
			10/1	0	04	30
			10/2	0	02	28
			11	0	06	58
			20/2	0	06	58
			21	0	02	53
	52		25	0	02	28
	65		5	0	06	58
			6	0	06	83
			15	0	06	58
			18	0	05	31
			24	0	00	25
			25	0	06	58
	69		4	0	04	30
			5	0	02	28
			7	0	06	32
			14	0	06	33
			17/2/1	0	03	79
			24	0	06	07
			26	0	03	04
	79		3	0	00	00
			4	0	06	58
			7/1	0	00	25
			7/2	0	01	52
			8	0	05	06
			13	0	06	58
			18/1	0	01	28
			18/2	0	05	56
			23	0	06	58
	84		3/2	0	05	56
			8/2/2	0	03	79
			9/2	0	00	51
			12	0	05	56
			13	0	01	01
			19	0	06	58
			22/1	0	00	51
			22/2	0	05	82
	87		2	0	03	79
			95	0	00	51
			107	0	01	26
			108	0	01	01
			114	0	00	51
			117	0	00	51
			119	0	00	51
			120	0	00	00
			125	0	02	02

1	2	3	4	5	6	7
			136	0	00	51
			140/1	0	00	51
			142/2	0	00	51
			334	0	00	51
			344	0	00	76
			359	0	00	51
			370/1	0	00	51
			371	0	00	51
इसराता	66-67	26	13	0	06	83
			18	0	06	83
			23	0	06	83
		35	3	0	04	81
			8	0	02	28
			9	0	04	55
			12	0	06	58
			19	0	06	58
			22	0	06	83
		62	2	0	06	32
			9	0	04	05
			10	0	02	78
			11	0	06	58
			12	0	00	00
			20	0	06	07
			21	0	06	83
		72	6/2	0	02	02
			15	0	06	32
			16	0	06	83
			25/1	0	02	53
			25/2	0	04	05
		73	1	0	06	83
			10	0	02	53
		99	5/1	0	00	51
			5/2	0	03	04
			5/3	0	03	04
			6/1	0	02	78
			6/2	0	03	29
			7	0	00	76
			14	0	05	82
			15	0	01	01
			17	0	06	83
			24/2	0	00	00
			24/3	0	00	51
			24/4	0	03	54
			24/5	0	01	77
			24/6	0	00	51
			24/7	0	00	25
		108	4	0	06	07
			7	0	06	32
			8	0	00	51
			13	0	05	06

1	2	3	4	5	6	7
			14	0	00	76
			18	0	06	83
			23	0	06	83
		135	3	0	06	83
			8	0	06	56
			9	0	01	52
			12	0	00	51
			13	0	09	11
			17	0	01	01
			18	0	03	04
			24	0	00	76
			25	0	01	77
		144	5	0	07	08
			8	0	06	83
			14/2	0	00	00
			15/1	0	03	29
			15/2	0	03	29
			16	0	02	28
			17	0	04	55
			24	0	06	83
		168	4	0	06	07
			7	0	06	83
			13	0	00	25
			14	0	05	83
			17	0	05	04
			18	0	05	79
			23	0	02	78
			219	0	01	26
			302	0	00	51
			304	0	00	51
			308	0	02	02
			327	0	00	51
			335	0	00	51
			358	0	00	51
			907	0	00	51
कारद	64	7	6	0	05	06
			15	0	06	83
			16	0	06	83
			24	0	02	02
			25	0	05	06
		11	4	0	03	79
			5/1	0	01	01
			7	0	02	28
			23	0	02	02
		22	3	0	06	32
			4	0	00	00
			8	0	06	83
			13/1	0	03	79
			13/2	0	01	77
			18	0	06	83

1	2	3	4	5	6	7
			22	0	00	51
			23	0	06	58
	27		2	0	05	56
			3	0	01	52
			9	0	06	83
			12	0	06	83
			19	0	06	83
			21	0	00	00
			22	0	07	08
	46		25	0	00	00
	47		1	0	02	78
			2	0	03	79
			10	0	06	83
			11	0	06	83
			20	0	06	83
			21	0	06	83
	50		1	0	02	78
	51		5	0	03	79
			6	0	06	83
			15	0	06	83
			16	0	06	83
			24	0	00	00
			25	0	07	08
	70		4/1	0	00	00
			4/2	0	03	79
			5	0	02	53
			7	0	06	83
			14	0	06	83
			17/1	0	02	78
			17/2	0	02	78
			23	0	00	00
			24	0	06	07
	73		3	0	04	55
			4	0	00	76
			8	0	06	83
			13	0	06	83
			18	0	06	83
			22	0	00	25
			23	0	06	58
	91		2	0	05	06
			3	0	02	02
			9	0	06	83
			12/2	0	06	83
			19	0	06	83
			22/1	0	00	25
			22/2	0	02	78

1	2	3	4	5	6	7
		92	1	0	00	76
			20	0	06	83
			21	0	06	83
		106	5/1	0	04	05
			5/2	0	00	00
			6	0	05	82
			15	0	06	83
			16	0	06	83
			25/1	0	06	32
		107	1	0	03	04
		109	4	0	00	76
			5	0	05	56
			6/1	0	01	26
			7	0	05	56
			14	0	06	83
			131	0	01	26
			132	0	01	26
			140	0	01	77
			142	0	01	01
			145	0	01	26
			171	0	00	51
			174	0	00	51
			195	0	00	51
			213	0	00	51
			393	0	00	51
			406	0	02	78

[फा. सं. आर-25011/14/2001-ओ.आर-I]

एस.एस. केमवाल, अवर सचिव

New Delhi, the 24th July, 2002

S. O. 2481.— Whereas by the Notifications of the Government of India in the Ministry of Petroleum and Natural Gas, S.O. No. 1536 dated 3-07-2001, S.O. No. 1382 & 1383 dated 24-04-2002, issued under Sub.-Sec. (1) of Sec. 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the Right of User in the Land specified in the Schedule appended to those Notifications for the purpose of laying pipeline for the transportation of Crude Oil from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan by the Indian Oil Corporation Limited for implementing the "Augmentation of Viramgam-Chaksu, Chaksu-Panipat and Chaksu-Mathura Sections of Salaya-Mathura Pipeline System Project" in Tehsil Israna, District Panipat in Haryana State;

And, whereas, copies of the said Gazette Notifications were made available to the public on 20/7/2001 & 17/5 /2002 respectively;

And, whereas, the Competent Authority has under Sub.-Sec. (1) of Sec. 6 of the said Act, has submitted his report to the Central Government;

And, whereas, the Central Government after considering the said report is satisfied that the Right of User in the Land specified in the Schedule appended to these Notifications should be acquired;

Now, therefore, in exercise of the powers conferred by Sub.-Sec. (1) of Sec. 6 of the said Act, the Central Government hereby declares that the Right of User in the Land specified in the Schedule appended to this Notification is acquired;

And, further in exercise of the powers conferred by Sub.-Sec. (4) of Sec. 6 of the said Act, the Central Government hereby directs that the Right of User in the said Land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

Schedule Annexed

Schedule

Tehsil: Israna

Dist: Panipat

State: Haryana

Name of Village	Hadbast No.	Mustatil No	Khasra/ Killa No	Area		
				Hectare.	Are	Sq.Mtr
1	2	3	4	5	6	7
Bowana Lakhu	86	72	18	0	01	52
			22	0	01	01
			23/1	0	03	54
			23/2	0	01	77
		75	2	0	06	07
			3	0	00	76
			9	0	06	07
			12	0	06	58
			19/1	0	02	02
			19/2	0	05	56
			22	0	06	58
		99	1/2	0	01	77
			2	0	05	06
			10/1	0	06	58
			11/1	0	01	77
			11/2	0	05	56
			20	0	06	58
			21/1/1	0	04	55
			21/2	0	00	76
		102	1	0	06	58
			926	0	00	51
Kayath	91	22	2	0	02	78
			9/1	0	02	02
			9/2	0	05	06
			11/1	0	00	00
			11/2	0	00	00
			12/1	0	06	32
			12/2	0	00	51
			19/2/1	0	01	77
			20	0	05	56
			21/2	0	06	32
		32	16	0	02	78
			25/2	0	05	06
		33	1	0	06	83
			10	0	06	58
			11	0	06	83
			20	0	04	05
		37	5/2	0	06	58
			6/1/1/1	0	01	26
			6/1/1/2	0	00	76
			6/2/1	0	01	52
			6/2/2	0	03	04
			15	0	06	83

1	2	3	4	5	6	7
			16	0	04	81
			17	0	01	77
			24	0	06	58
			25	0	00	25
		46	4	0	06	32
			7	0	06	83
			14	0	06	83
			17/1	0	06	58
			17/2	0	00	51
			24/1	0	02	28
			68	0	01	26
			85	0	00	51
			111	0	00	51
			115	0	00	51
			116	0	00	51
			123	0	01	77
Shahpur	89	3	23	0	03	79
		16	3	0	06	58
			8	0	06	58
			13	0	06	32
			18/1	0	01	01
			18/2	0	02	78
			19	0	04	30
			22	0	06	32
		20	3/2	0	00	76
			14	0	03	79
			17	0	06	58
			24	0	06	58
		33	4	0	06	58
			7/2	0	04	05
			8	0	03	04
			13/1	0	03	54
			13/2/2	0	03	04
			18/1	0	01	52
			18/2	0	04	81
			23/1	0	00	51
			23/2	0	06	07
		36	3	0	06	58
			8	0	06	58
			9	0	00	00
			12	0	03	04
			13	0	04	05
			18	0	00	00
			19	0	06	58
			22	0	06	83
		50	2	0	06	58
			9	0	06	58
			11	0	00	00
			12	0	06	07

1	2	3	4	5	06	7
			19	0	03	04
			20	0	04	05
			21/2	0	06	58
	51		1	0	06	58
			10/1	0	04	30
			10/2	0	02	28
			11	0	06	58
			20/2	0	06	58
			21	0	02	53
	52		25	0	02	28
	65		5	0	06	58
			6	0	06	83
			15	0	06	58
			16	0	05	31
			24	0	00	25
			25	0	06	58
	69		4	0	04	30
			5	0	02	28
			7	0	06	32
			14	0	06	33
			17/2/1	0	03	79
			24	0	06	07
			26	0	03	04
	79		3	0	00	00
			4	0	06	58
			7/1	0	00	25
			7/2	0	01	52
			8	0	05	06
			13	0	06	58
			18/1	0	01	26
			18/2	0	05	56
			23	0	06	58
	84		3/2	0	05	56
			8/2/2	0	03	79
			9/2	0	00	51
			12	0	05	56
			13	0	01	01
			19	0	06	58
			22/1	0	00	51
			22/2	0	05	82
	87		2	0	03	79
			95	0	00	51
			107	0	01	26
			108	0	01	01
			114	0	00	51
			117	0	00	51
			119	0	00	51
			120	0	00	00
			125	0	02	02

1	2	3	4	5	6	7
			136	0	00	51
			140/1	0	00	51
			142/2	0	00	51
			334	0	00	51
			344	0	00	76
			359	0	00	51
			370/1	0	00	51
			371	0	00	51
Israna	66-67	26	13	0	06	83
			18	0	06	83
			23	0	06	83
		35	3	0	04	81
			8	0	02	28
			9	0	04	55
			12	0	06	58
			19	0	06	58
			22	0	06	83
		62	2	0	06	32
			9	0	04	05
			10	0	02	78
			11	0	06	58
			12	0	00	00
			20	0	06	07
			21	0	06	83
		72	6/2	0	02	02
			15	0	06	32
			16	0	06	83
			25/1	0	02	53
			25/2	0	04	05
		73	1	0	06	83
			10	0	02	53
		99	5/1	0	00	51
			5/2	0	03	04
			5/3	0	03	04
			6/1	0	02	78
			6/2	0	03	29
			7	0	00	76
			14	0	05	82
			15	0	01	01
			17	0	06	83
			24/2	0	00	00
			24/3	0	00	51
			24/4	0	03	54
			24/5	0	01	77
			24/6	0	00	51
			24/7	0	00	25
		108	4	0	06	07
			7	0	06	32
			8	0	00	51
			13	0	05	06

1	2	3	4	5	06	7
			14	0	00	78
			18	0	06	83
			23	0	06	83
		135	3	0	06	83
			8	0	05	56
			9	0	01	52
			12	0	00	51
			13	0	09	11
			17	0	01	01
			18	0	03	04
			24	0	00	78
			25	0	01	77
		144	5	0	07	08
			6	0	06	83
			14/2	0	00	00
			15/1	0	03	29
			15/2	0	03	29
			16	0	02	28
			17	0	04	55
			24	0	06	83
		168	4	0	06	07
			7	0	06	83
			13	0	00	25
			14	0	06	83
			17	0	03	04
			18	0	03	79
			23	0	02	78
			219	0	01	26
			302	0	00	51
			304	0	00	51
			308	0	02	02
			327	0	00	51
			335	0	00	51
			358	0	00	51
			907	0	00	51
Karad	64	7	6	0	05	06
			15	0	06	83
			16	0	06	83
			24	0	02	02
			25	0	05	06
		11	4	0	03	79
			5/1	0	01	01
			7	0	02	28
			23	0	02	02
		22	3	0	06	32
			4	0	00	00
			8	0	06	83
			13/1	0	03	79
			13/2	0	01	77
			18	0	06	83

1	2	3	4	5	6	7
			22	0	00	51
			23	0	06	58
		27	2	0	05	56
			3	0	01	52
			9	0	06	83
			12	0	06	83
			19	0	06	83
			21	0	00	00
			22	0	07	08
	46		25	0	00	00
	47		1	0	02	78
			2	0	03	79
			10	0	06	83
			11	0	06	83
			20	0	06	83
			21	0	06	83
	50		1	0	02	78
	51		5	0	03	79
			6	0	06	83
			15	0	06	83
			16	0	06	83
			24	0	00	00
			25	0	07	08
	70		4/1	0	00	00
			4/2	0	03	79
			5	0	02	53
			7	0	06	83
			14	0	06	83
			17/1	0	02	78
			17/2	0	02	78
			23	0	00	00
			24	0	06	07
	73		3	0	04	55
			4	0	00	76
			8	0	06	83
			13	0	06	83
			18	0	06	83
			22	0	00	25
			23	0	06	58
	91		2	0	05	06
			3	0	02	02
			9	0	06	83
			12/2	0	06	83
			19	0	06	83
			22/1	0	00	25
			22/2	0	02	78

1	2	3	4	5	6	7
		92	1	0	00	76
			20	0	06	83
			21	0	06	83
		106	5/1	0	04	05
			5/2	0	00	00
			6	0	05	82
			15	0	06	83
			16	0	06	83
			25/1	0	06	32
		107	1	0	03	04
		109	4	0	00	76
			5	0	05	56
			6/1	0	01	26
			7	0	05	56
			14	0	06	83
			131	0	01	26
			132	0	01	26
			140	0	01	77
			142	0	01	01
			145	0	01	26
			171	0	00	51
			174	0	00	51
			195	0	00	51
			213	0	00	51
			393	0	00	51
			406	0	02	78

[No. R-25011/14/2001-O.R.-I]
S.S. KEMWAL, Under Secy.

नई दिल्ली, 24 जुलाई, 2002

का. आ. 2482.— केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्यांक का. आ. 1537 तारीख 3 जुलाई, 2001 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट राजस्थान राज्य की तहसील : किशनगढ़, जिला अजमेर की भूमि में इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा गुजरात राज्य में विरमगाम से राजस्थान राज्य के चाकसू से होते हुए हरियाणा राज्य के पानीपत तक सलावा-मथुरा पाइप लाइन प्रणाली परियोजना के विरमगाम-चाकसू, चाकसू-पानीपत और चाकसू-मथुरा सेक्शनों के संवर्धन के क्रियान्वयन के लिए अपरिष्कृत तेल के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त अधिसूचना की प्रतियाँ जनता को तारीख 20.07.2001 को उपलब्ध करा दी गई थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में उपयोग के अधिकार का अर्जन किया जाता है;

और अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख से, केन्द्रीय सरकार में निहित होने के बजाए सभी विल्लंगमों से मुक्त, इंडियन ऑयल कॉरपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तहसील:किशनगढ़

जिला:अजमेर

राज्य:राजस्थान

गाँव का नाम	खसरा संख्या	क्षेत्रफल		
		हेक्टेयर	एयर	वर्ग मीटर
1	2	3	4	5
गोठियाना	255	0	09	88
	257	0	08	60
	259	0	22	04
	260	0	13	39
	269	0	00	97
	268	0	05	82
	265	0	02	80
	266	0	13	86
	267	0	26	91
	272	0	15	62
	273	0	16	34
	250	0	03	32
	251	0	20	31
	249	0	01	63
	248	0	19	96
	282	0	00	24
	222	0	01	56
	137	0	01	30
	126	0	17	44
	127	0	00	49

1	2	3	4	5
	123	0	16	00
	89	0	01	04
	87	0	29	32
	98	0	02	02
	97	0	09	90
	100	0	01	98
	73	0	04	78
	74	0	02	97
	76	0	08	66
	792	0	04	81
	785	0	01	01
	780	0	00	33
	800	0	01	94
	904/1	0	08	53
	903	0	02	43
	899	0	01	35
	897	0	01	54
	898	0	00	65
	895	0	06	50
	905/2	0	17	68
	887	0	02	99
	886	0	00	40
	908/1	0	10	50
	965	0	00	46
	966	0	09	88
	967	0	00	44
	984	0	08	24
	983	0	09	19
	982	0	08	10
	981	0	15	45
	996	0	00	38
	997	0	43	86
जोरावरपुरा	606	0	00	34
	604	0	06	46
	603	0	04	60
	14	0	00	69
	12	0	21	00
	11	0	05	72
	13	0	05	59
	21	0	09	36

1	2	3	4	5
	19	0	06	05
	36	0	20	48
	34	0	01	56
	60	0	05	98
	59	0	04	68
	58	0	03	45
	66	0	18	89
	73/2	0	36	21
	75	0	00	33
	119	0	14	95
	120	0	03	50
आकोडिया	1680	0	25	10
	1679/3	0	07	64
	1683/1	0	44	33
	1684	0	15	21
	1689/1	0	09	65
झिरोता	291	0	07	31
	290	0	03	64
	289	0	15	15
	301	0	05	26
	299	0	00	56
	304	0	08	52
	300	0	05	59
	314	0	32	50
	316	0	16	73
	317	0	00	72
	226	0	02	84
	225	0	24	29
	228	0	09	71
	227	0	00	65
	218	0	05	69
	214	0	05	85
	213/6	0	10	02
	212	0	10	21
	210	0	15	54
	209/2	0	09	23
	206/1/9	0	06	05
	206/1/13	0	02	66
	206/1/14	0	00	30

1	2	3	4	5
	121	0	01	17
	113/2	0	11	70
	117	0	10	47
	112	0	13	07
	111	0	00	62
	110	0	00	62
	109	0	03	97
	102	0	28	06
	101	0	10	92
	90	0	00	31
	84	0	03	07
	45	0	01	04
	47	0	66	24
दसुक	818	0	11	77
	817	0	08	97
	816	0	05	98
	814	0	17	16
	798	0	69	94
	62/1118	0	02	08
	61	0	17	23
	76	0	29	45
	75	0	01	60
	77	0	10	71
	152	0	09	27
	156	0	38	79
	200	0	16	28
	199	0	06	16
	202	0	00	88
	215	0	08	49
	214	0	20	15
	213	0	04	07
	210	0	01	18
	225	0	13	68
	226	0	12	67
	228	0	00	88

1	2	3	4	5
	233	0	00	32
	232	0	11	18
मांढियावड़ कला	65/3	0	18	87
	68	0	13	42
	65/5	0	10	46
	69	0	01	05
	71	0	29	78
	72	0	01	07
	74	0	13	09
	80	0	00	88
	94	0	14	47
	81	0	01	37
	82	0	04	22
	83	0	01	54
	84	0	10	37
	19	0	22	75
	42	0	03	03
	43	0	05	43
	41	0	10	37
	40	0	08	87
	39	0	01	59
	40/209	0	01	54
	36	0	06	22
	34	0	00	82
	35	0	02	04
	33	0	06	08
मोठी	116	0	04	27
	119	0	20	79
	115	0	12	10
	113	0	06	88
मांढियावड़ खुरद	2	0	06	22
	1/2	0	01	76
	1/1	0	07	34
	5/4	0	26	62

[फा. सं. आर-25011/12/2001-ओ.आर-I]

एस.एस. केमवाल, अवर सचिव

New Delhi, the 24th July, 2002

S. O. 2482.— Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 1537 dated 03.07.2001 issued under sub section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land in Tehsil: Kisangarh, District: Ajmer in Rajasthan State, specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of Crude Oil from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan by the Indian Oil Corporation Limited for implementing the Augmentation of Viramgam-Chaksu, Chaksu-Panipat and Chaksu-Mathura sections of Salaya-Mathura Pipeline System Project;

And whereas, copy of the said notification was made available to the general public on 20.07.2001;

And whereas, the Competent Authority has under sub-section (1) of section 6 of the said Act submitted his report to the Central Government;

And whereas, the Central Government, after considering the said report is satisfied that the right of user in the land specified in the Schedule appended to this Notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vests from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

SCHEDULE**Tehsil:Kisangarh****District : Ajmer****State : Rajasthan**

Name of Village	Khasara No.	Area		
		Hectare	Are	Sq.mtr.
1	2	3	4	5
Gothiyana	255	0	09	88
	257	0	08	60
	259	0	22	04
	260	0	13	39
	269	0	00	97
	268	0	05	82
	265	0	02	80
	266	0	13	86
	267	0	26	91
	272	0	15	62
	273	0	16	34
	250	0	03	32
	251	0	20	31
	249	0	01	63
	248	0	19	96
	282	0	00	24
	222	0	01	56
	137	0	01	30
	126	0	17	44
	127	0	00	49
	123	0	16	00
	89	0	01	04
	87	0	29	32
	98	0	02	02
	97	0	09	90
	100	0	01	98
	73	0	04	78
	74	0	02	97
	76	0	06	66

1	2	3	4	5
	792	0	04	81
	785	0	01	01
	780	0	00	33
	800	0	01	94
	904/1	0	08	53
	903	0	02	43
	899	0	01	35
	897	0	01	54
	898	0	00	65
	895	0	06	50
	905/2	0	17	68
	887	0	02	99
	886	0	00	40
	908/1	0	10	50
	965	0	00	46
	966	0	09	88
	967	0	00	44
	984	0	08	24
	983	0	09	19
	982	0	08	10
	981	0	15	45
	996	0	00	38
	997	0	43	86
Jorawarpura	606	0	00	34
	604	0	06	46
	603	0	04	60
	14	0	00	69
	12	0	21	00
	11	0	05	72
	13	0	05	59
	21	0	09	36
	19	0	06	05
	36	0	20	48
	34	0	01	56
	60	0	05	98

1	2	3	4	5
	59	0	04	68
	58	0	03	45
	66	0	18	89
	73/2	0	36	21
	75	0	00	33
	119	0	14	95
	120	0	03	50
Akodiya	1680	0	25	10
	1679/3	0	07	64
	1683/1	0	44	33
	1684	0	15	21
	1689/1	0	09	65
Zirota	291	0	07	31
	290	0	03	64
	289	0	15	15
	301	0	05	26
	299	0	00	56
	304	0	08	52
	300	0	05	59
	314	0	32	50
	316	0	16	73
	317	0	00	72
	226	0	02	84
	225	0	24	29
	228	0	09	71
	227	0	00	65
	218	0	05	69
	214	0	05	85
	213/6	0	10	02
	212	0	10	21
	210	0	15	54
	209/2	0	09	23
	206/1/9	0	06	05
	206/1/13	0	02	66
	206/1/14	0	00	30

1	2	3	4	5
	121	0	01	17
	113/2	0	11	70
	117	0	10	47
	112	0	13	07
	111	0	00	62
	110	0	00	62
	109	0	03	97
	102	0	28	06
	101	0	10	92
	90	0	00	31
	84	0	03	07
	45	0	01	04
	47	0	66	24
Dhasuk	818	0	11	77
	817	0	08	97
	816	0	05	98
	814	0	17	16
	798	0	69	94
	62/1118	0	02	08
	61	0	17	23
	76	0	29	45
	75	0	01	60
	77	0	10	71
	152	0	09	27
	156	0	38	79
	200	0	16	28
	199	0	06	16
	202	0	00	88
	215	0	08	49
	214	0	20	15
	213	0	04	07
	210	0	01	18
	225	0	13	68
	226	0	12	67

1	2	3	4	5
	228	0	00	88
	233	0	00	32
	232	0	11	18
Mandiyawar Kala	65/3	0	18	87
	66	0	13	42
	65/5	0	10	46
	69	0	01	05
	71	0	29	78
	72	0	01	07
	74	0	13	09
	80	0	00	88
	94	0	14	47
	81	0	01	37
	82	0	04	22
	83	0	01	54
	84	0	10	37
	19	0	22	75
	42	0	03	03
	43	0	05	43
	41	0	10	37
	40	0	08	87
	39	0	01	59
	40/209	0	01	54
	36	0	06	22
	34	0	00	82
	35	0	02	04
	33	0	06	08
Mothi	116	0	04	27
	119	0	20	79
	115	0	12	10
	113	0	06	88
Mandiyawar Khurd	2	0	06	22
	1/2	0	01	76
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श्रम मंत्रालय

नई दिल्ली, 12 जुलाई, 2002

का.आ. 2483.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 750/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-7-2002 को प्राप्त हुआ था।

[सं. एल-12011/156/2001-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 12th July, 2002

S.O. 2483.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 750/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 11-7-2002

[No. L-12011/156/2001-IR (B-II)]

C. GANGADHARAN, Under Secy

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Monday the 24th June, 2002

Present : K. KARTHIKEYAN,
Presiding Officer**INDUSTRIAL DISPUTE NO. 750/2001**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri J. Subramanian and the Management of Vijaya Bank.)

BETWEEN

The Joint Secretary, : I Party/Claimant

Vijaya Bank Workers
Organisation**AND**

Vijaya Bank Chennai : II Party/Management

Appearances :

For the Claimant : Sri S.D. Sreenivasan,
Authorised
RepresentativeFor the Management : Deputy General
Manager

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-12011/156/2001/IR (B-II) dated 28-11-2001.

On receipt of order of reference from the Government of India, Ministry of Labour, this case has been taken on file as I.D. No. 750/2001 and notices were sent to the parties to the dispute, with a direction to appear before this Tribunal on 03-01-2002 and to file their respective Claim Statement and counter statement to prosecute this case further. On receipt of notice from this Tribunal, the parties to the dispute appeared and prosecuted this case further.

When the matter came up before me for final hearing on 8-05-2002, upon perusing the Claim Statement, Counter Statement, additional Counter Statement, the other material papers on record, documentary evidence filed by the I Party/Union, written arguments filed by the II Party/Management and after hearing the arguments advanced by the authorised representative for the I Party/Union and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the management of Vijaya Bank in imposing the punishment of reduction of one stage in the time scale of pay on Sri J. Subramanian is legal and justified? If not, what relief the concerned workman is entitled to?”

2. The averments in the Claim Statement filed by the I Party/Claimant Union (hereinafter refers to as Petitioner) are briefly as follows :

This industrial dispute has been raised by the Deputy General Secretary represented by its Vijaya Bank Workers Organisation, Chennai, espousing the cause of the workman Sri J. Subramanian. The concerned workman Sri J. Subramanian was working as a Clerk at Vellore branch of the II Party/Management, Vijaya Bank. He was served with charge sheet dated 22-9-98 alleging that he remained absent unauthorisedly for work for a period of 112 days without submitting proper leave application on several occasions. The concerned workman submitted his reply dated 12-11-98 explaining in detail that he had in fact, submitted leave applications almost on all occasions mentioned in the charge sheet and sought leave of absence as per rules of the bank and that only on two occasions, he remained absent on medical grounds, for which the relevant medical certificates were duly enclosed. He had requested, in his reply, the Disciplinary Authority to consider the case leniently and had admitted the charges framed against him. The Disciplinary Authority by his letter dated 30-11-98 informed the concerned employee that while holding the charge No. 4 as partly proved to the extent of submission of leave applications, proposed punishment of reduction to a lower stage by two stages in the time scale of pay. Thereafter, the concerned employee had requested for a personal hearing. The same was held on 14-1-99 and the employee along with the defence representative had appeared before the Disciplinary Authority and explained once again that on almost all occasions mentioned in the charge sheet, the employee had submitted leave applications as per the rules of the bank and also that he had no intention of pre-empting the bank from conducting medical examination, since he had remained on leave on medical grounds only on two occasions. He had also explained that in terms of the provisions of Bipartite Settlement, the action of remaining on leave unauthorisedly

is treated only as a minor misconduct. However, the Disciplinary Authority while treating the act as a minor misconduct has also treated the same as a major misconduct. The Disciplinary Authority by his order dated 19-2-99 had imposed the punishment of reduction to a lower stage in the time scale of pay by one stage on the workman Sri J. Subramanian. Against this order of penalty, the concerned workman had preferred an appeal to the General Manager (Personnel) Vijaya Bank, Head Office, Bangalore on 5-4-99, who is the Appellate Authority. The Appellate Authority without proper application of mind to the facts and circumstances of the case acted mechanically and in verbatim accepted the version of the Disciplinary Authority and thus, chose to dismiss the appeal in his order dated 26-5-99. The order of the Appellate Authority is void and contrary to the principles of natural justice and relevant provisions of law in force. The Petitioner Union raised an industrial dispute before the Regional Labour Commissioner (Central), Chennai by a letter dated 25-7-2000. The said conciliation proceedings ended in a failure on 13-12-2000 and on submission of failure of conciliation report by the officer, the Government was pleased to refer this case for adjudication by this Tribunal. Out of 38 occasions mentioned in the charge sheet, the employee was on leave on medical grounds only for two times for which the medical certificates were also submitted. The Branch Manager of the Vellore Branch of the Respondent/Bank accepted the same and forwarded the applications for sanction to Regional Office. There was no mention about the validity of the certificates nor was there any attempt to conduct medical examination on the delinquent workman. The charge sheet relates to incident of remaining absent unauthorisedly which is classified as a minor misconduct as per para 19.7(a) of the Bipartite Settlement. The charge No. 4 relating to insubordination and disobedience of the leave rules of the bank is totally baseless can be easily verified that on 28 occasions the employee had submitted leave applications and on the other 10 occasions, it was accepted by the Disciplinary Authority himself that the employee had submitted the leave applications. The Disciplinary Authority had in fact, inflicted multiple punishment to the workman by punishing him for the same act of remaining absent unauthorisedly under different heads. While the Bipartite Settlement under Chapter XIX has clearly classified the act of remaining absent from duty as minor misconduct, the punishment imposed on the workman for the same act as four different charges is totally illegal as the same violates para 19.9 of the Bipartite Settlement which prohibits the imposition of double jeopardy for the same act of misconduct. In the final order of the Disciplinary Authority, the scale of pay of the workman has reduced from Rs. 4185 to Rs. 3955. However, it was further imposed that the employee would be barred from earning any increment for a period of one year from the date of punishing order. While this order is totally different from the proposed punishment, the same amounts to double punishment, since the reduction in scale of pay is an unique punishment and the stoppage of increment is totally a different punishment, as envisaged under para 19.6 of the Bipartite Settlement. This also seriously violates para 19.9 of the Bipartite Settlement. Hence, it is prayed that this Hon'ble Tribunal may be pleased to hold that the Respondent/Bank was not justified in imposing the punishment of reduction of one stage in the time scale of pay on Sri J. Subramanian and direct the Respondent/Bank to restore the increments and to reimburse all the losses suffered by the workman together with all

consequential benefits and to pass an award accordingly together with cost.

3. The averments in the Counter Statement filed by the II Party/Management, Vijaya Bank Chennai (hereinafter refers to as Respondent) are briefly as follows :—

The concerned workman Sri J. Subramanian was issued a charge memo dated 22-9-98 for his unauthorised absence and irregular attendance which is a misconduct under the terms of the Bipartite Settlement, 1966. Between the period 27-02-97 to 20-07-98 he had remained absent on 38 occasions for a total period of about 112 days. Because of his misconduct, the above charge memo was issued and the charge sheet is unambiguous, simple and clear. The concerned workman submitted his explanation belatedly on 12-11-98, wherein among other things, he had voluntarily admitted the charges levelled against him, as provided under para 19.12(e) of the Bipartite Settlement, 1966 and requested that the matter may be treated leniently and he has further assured that he will not give scope for repetition of such instance in future. The Disciplinary Authority after considering the gravity of the misconduct as alleged against the workman, his voluntary admission of the charge under para 19.12(e) of the settlement, all other connected materials and his past service has held that charge nos. 1 to 3 are proved and charge no. 4 is partly proved. Therefore, he has propose the following punishment :—

Charge No. 1 : Censure

Charge No. 2 : Censure

Charge No. 3 : Reduction to a lower stage in the time Scale of pay by two stages.

Charge No. 4 : Reduction to a lower stage in the time Scale of pay by one stage.

The proposed punishment was properly communicated to the charge sheeted employee by letter dated 30-11-98 and he was advised to make representation, if any, on the proposed punishment. On receipt of this letter, the concerned workman vide his representation dated 20-12-98 and requested for personal hearing. Accordingly, the workman and his defence representative appeared before the Disciplinary Authority on 14-1-99 and put forth their statement of defence. The Disciplinary Authority after considering the entire records including the charge sheet dated 22-9-98, explanation submitted by the workman dated 12-11-98, the deposition of the workman and his representative on 14-1-99, all other connected documents decided to impose the punishment mentioned in his order dated 19-2-99 as Censure for charge no. 1, as Censure for charge No. 2, reduction to a lower stage in the time scale of pay by one stage for charge no. 3, reduction to a lower stage in the time scale of pay by one stage for charge no. 4 and the said punishments to run concurrently. The averments in para 7 of the Claim Statement is misleading, hence the same are denied and his contention that the Disciplinary Authority while treating the act as minor misconduct has also treated the same as a major misconduct is false. Throughout the misconduct was treated only as minor misconduct and the punishment was also imposed only on that basis. In the appeal preferred by the concerned workman, the Appellate Authority after a careful consideration of the entire records including his grounds of appeal, rejected the appeal by his order dated 26-5-99. All the grounds raised by the workman were properly dealt

with by the Appellate Authority. Therefore, the allegations of the Petitioner Union that the Appellate Authority has acted mechanically, without any application of mind and verbatim and he had accepted the version of the Disciplinary Authority are baseless and false. The contention of the Petitioner Union that the bank had foisted two additional charges, charge nos. 3 and 4 are baseless. Their further contention that multiple punishment is inflicted is totally falls and contrary to the records. Finally, the punishment which was imposed on the workmen is reduction to the lower stage in the time scale of pay by one stage. That apart no other punishment was imposed. Para 19.9 of the Bipartite Settlement does not apply to the present case because only one punishment was imposed. The contention of the Petitioner that the reduction in time scale of pay is unique and different punishment and stoppage of increment is totally a different punishment is a misinterpretation. The above situation is clarified by appropriate circulars issued by the management. As stated in the order of punishment, the workman is entitled to draw his annual increment in the time scale of pay after one year from the date of the order. Therefore, the contention of the Petitioner that the increment was stopped is erroneous and contrary to the records. Hence, it is prayed that this Hon'ble Tribunal may be pleased to hold that the action of the management is legal and justified and dismiss the claim of the Petitioner Union.

4. The authorised representative of the II Party/Management has filed an additional written statement with the following averments :

In case of Award Staff the specific acts of misconduct committed or bifurcated into minor and gross misconduct and according to which charges are framed as per Chapter XIX of the Bipartite Settlement applicable to workman. Accordingly, in the present case, out of the four charges alleged against the Petitioner/Workman, charge nos. 1 and 2 are minor misconducts under sub-clause (a) and (b) of Clause 19.7 and charge nos. 3 and 4 constitute grave misconduct under sub-clause (f) and (c) of Clause 19.5 of the Bipartite Settlement. Accordingly, the domestic enquiry was conducted and the punishment was imposed in respect of each charges which was held as proved by the Enquiry Officer. However, since the punishments are to run concurrently, the highest punishment of all i.e. reduction to the lower stage in time scale of pay by one stage was along given effective. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to accept this additional written statement filed for elaborating the above mentioned clauses in the Bipartite Settlement.

5. When the matter was taken up for enquiry, with the consent of the authorised representatives on either side documents filed by the I Party/Union have been marked as Ex. W1 to W8. No documentary evidence has been let in on the side of the Respondent/Management. No one has been examined as a witness on either side. The learned authorised representative for the I Party/Union has advanced his arguments and on the side of the II Party/Management written arguments has been filed by their authorised representative.

6. The Point for my consideration is :—

“Whether the action of the management of Vijaya Bank in imposing the punishment of reduction of one stage in the time scale of pay on Sri J. Subramanian is legal and justified? If not, what relief

the concerned workman is entitled to ?”

Point :—

The concerned workman Sri J. Subramanian was working as a Clerk in the Vellore branch of the Respondent/ Bank. For his unauthorised absence for duty and irregular attendance, a charge memo dated 22-9-98 was issued to the concerned workman. The xerox copy of the charge memo dated 22-9-98 is Ex. W1. In that charge memo, it is alleged that the concerned workman is in the habit of remaining absent from duty unauthorisedly very frequently without complying with the leave rules of the bank and thereby disrupting the routine function/work at the branch and that as per the leave records of the concerned workman, he had availed leave on loss of pay for 64 days in 1994, 31 days in 1995 and 92 days in 1996 and no disciplinary action was initiated for his irregular attendance, with a view to give him an opportunity to improve his attendance and that during 1997-98 after excluding 24 days of casual leave and 48 days of privilege leave, the concerned workman remained absent for duty for a total period of 112 days on 38 occasions from 1-1-97 to 20-7-98 without complying with the leave rules of the bank and sought sanction of leave on loss of pay. Therefore, his unauthorised absence from duty and irregular attendance, which caused discreation of work at the branch amounts to minor misconduct, as per the clauses of Bipartite Settlement, 1966. The concerned workman has submitted his explanation for the charge memo under Ex. W1 belatedly on 12-11-98. The xerox copy of the same is Ex. W2. In that explanation, the concerned workman had voluntarily admitted the charges levelled against him as provided under para 19.12(e) of the Bipartite Settlement, 1966 and requested that the matter may be treated leniently assuring that he will not give scope for repetition of such instance in future. Subsequent to his explanation to the charge memo, the Disciplinary Authority issued a show cause notice dated 30-11-98 to the concerned workman and the xerox copy of the same is Ex. W3. In the show cause notice, the Disciplinary Authority has stated that in view of the voluntary admission of the concerned workman in respect of the charges levelled against him under Clause 19.12(e) of Bipartite Settlement, 1966 the Disciplinary Authority has held the charges bearing no. 1 to 3 as proved and charge no. 4 as partly proved and found the concerned workman guilty of charges on the basis of his own admission of guilt and that after careful consideration of the relevant records, gravity of the misconduct committed by the concerned workman and his past service records, the Disciplinary Authority proposed to impose the punishment of reduction to lower stage in the time scale of pay of the concerned workman by two stages. In that show cause notice itself, the concerned workman was informed that if he wants to make any representation in regard to the proposed punishment, he may do so within seven days of the receipt of that letter. Accordingly, the concerned workman has submitted his written representation dated 20-12-98 to the show cause notice for the proposed punishment. The xerox copy of the same is Ex. W4. As the concerned workman sought for personal hearing regarding the nature of punishment proposed to be imposed on him, he was permitted to appear before the Disciplinary Authority on 14-1-99 along with his defence representative for a personal hearing. Accordingly, the concerned workman along with Sri S. D. Srinivasan, Office Bearer of the Petitioner Union as his defence representative appeared before the Disciplinary Authority for the personal hearing and had made their submissions. The entire proceedings of the

personal hearing dated 14-1-99 conducted by the Disciplinary Authority of the Respondent/Bank was reduced to in writing and in that apart from the Disciplinary Authority, the concerned workman as charge sheeted employee and the defence representative have subscribed their signatures. The xerox copy of the proceedings of the personal hearing is Ex.W5. Subsequent to that the Disciplinary Authority passed a final order dated 19-02-99 after consideration of the entire records pertaining to the matter and the representations made by the charge sheeted employee, the concerned workman with his defence representative and imposed the punishment of reduction to lower stage in the time scale of pay for the concerned workman by one stage as the awarded punishment on all the four charges to run concurrently. The xerox copy of the final order passed by the Disciplinary Authority dated 19-2-99 is Ex.W6. Against that final order, the concerned workman preferred an appeal to the General Manager (Personnel), Vijaya Bank, Head Office, Bangalore, the Appellate Authority. The xerox copy of the appeal presented by the concerned workman is Ex.W7. The Appellate Authority after careful consideration of the entire materials has held in the order passed that he does not find any justifiable grounds to interfere with the impugned proceedings dated 19-2-99 of the Disciplinary Authority and in the result, he dismissed the appeal preferred by the concerned workman as the same is devoid of any merits. The xerox copy of the order dated 26-5-99 passed by the Appellate Authority is Ex.W8.

7. The learned representative for the Petitioner Union would argue that the concerned workman has submitted his explanation under Ex.W2 for the charge memo under Ex.W1 and had requested the Disciplinary Authority to take into account the entire facts and circumstances and his voluntary admission under para 19.12(e) of the Bipartite Settlement and requested him to treat the matter leniently and though the concerned workman had explained that in terms of the provisions of Bipartite Settlement the action of remaining on leave unauthorisedly is treated only as a misconduct, the Disciplinary Authority, while treating the act as misconduct, has also treated the same as major misconduct and had imposed punishment of reduction to lower stage in the time scale of pay by one stage on the concerned workman and the appellate Authority without proper application of mind to the facts and circumstances of the case, after mechanically and in verbatim accepted the versions of the Disciplinary Authority and dismissed the appeal. It is void and contrary to the principles of natural justice and relevant provisions of law in force. He would further contend that the Disciplinary Authority had inflicted multiple punishment to the workman by punishing him for the same act of remaining absent unauthorisedly under different heads and for this minor misconduct, the punishment imposed on the workman on the basis of four different charges, is totally illegal and a violation of para 19.9 of the Bipartite Settlement, which prohibits the imposition of double jeopardy for the same act of misconduct and order passed by the Disciplinary Authority as punishment is totally different from the proposed punishment and the same amounts to double punishment. Since the reduction in scale of pay is an unique punishment and the stoppage of increment is totally a different punishment. Hence, the Respondent/Bank was not justified in imposing the punishment of reduction of one stage in the time scale of pay on Sri J. Subramanian. Therefore, the Respondent/Bank has to be directed to restore increments and to reimburse all the losses suffered by the concerned

workman together with all consequential benefits.

8. The written arguments filed by the learned authorised representative for the management, it is contended that the Disciplinary Authority throughout treated the misconduct of the concerned workman only as a minor misconduct and the punishment was also imposed only on that basis. The contention of the Petitioner Union that multiple punishment is inflicted is totally false and contrary to the records. The punishment which was imposed on the concerned workman is reduction to lower stage in the time scale of pay by one stage and that apart no other punishment was imposed and para 19.9 of the Bipartite Settlement does not apply to the present case because only one punishment was imposed. The contention of the Petitioner Union that reduction in time scale of pay is unique and different punishment and stoppage of increment is totally different punishment is misinterpretation. In the order of punishment itself, it is stated that the workman is entitled to draw his annual increment in the time scale of pay after one year from the date of the order. Therefore, the contention of the Petitioner Union that stoppage of increment of the concerned workman is erroneous and contrary to records.

9. From the available plea on either side and the admitted documents Ex.W1 to W8, it is clearly seen that the contention made by the learned authorised representative for the Respondent/Management are correct and acceptable. The concerned workman in his explanation under Ex.W2 to the charge memo under Ex.W1 has clearly stated that he voluntarily made an admission under para 19.12(e) of the Bipartite Settlement and requested the disciplinary Authority to treat the matter leniently on the basis of his assurance that he will not give scope for repetition of such instances in future in the matter of availment of leave. He has not admitted his guilt for the charges levelled against him as mentioned in Ex.W1 under anybody's compulsion or coercion. On the other hand, as it is mentioned by him in Ex.W2, it is a voluntary admission. Based on his voluntary admission under clause 19.12(e) of the Bipartite Settlement, proposed punishment was informed to the concerned workman by the Disciplinary Authority under the show cause notice under Ex.W3. After providing an opportunity to the concerned workman to make his representation personally along with his defence representative, the disciplinary Authority after careful consideration of entire records pertaining to the matter had passed a final order under Ex.W6 and has imposed the punishment of reduction to lower stage in the time scale of pay of the concerned workman by one stage and the same to run concurrently, instead of the proposed punishment of reduction to lower stage in the time scale of pay by two stages. It has been properly considered by the Appellate Authority also and having found that no justifiable grounds to interfere with the impugned proceedings dated 19-2-99 of the Disciplinary Authority. Chennai to dismiss the appeal of the concerned workman as devoid of any merits. All these decisions of the Disciplinary Authority as well as the Appellate Authority have been stated in their respective orders under Ex.W6 and W8 after reasons for their conclusions. Under such circumstances, it cannot be said that multiple punishment has been inflicted by the Disciplinary Authority on the concerned workman and the Appellate Authority without properly considering the facts and circumstances mechanically confirmed the order of the Disciplinary Authority. What that has been provided in the Bipartite Settlement as punishment for such minor

misconduct, the Disciplinary Authority has imposed the same, after adhering to the procedure which has been subsequently confirmed by the Appellate Authority as correct. Under such circumstances, it cannot be said that for the minor misconduct the punishment imposed on the workman is totally illegal and it violates para 19.9 of the Bipartite Settlement and it amounts to imposition of double jeopardy for the same act of misconduct. On the other hand, a perusal of records in this case clearly go to show that the proven misconduct which are four in numbers as per the charge memo under Ex.W1, the punishment of reduction to lower stage in time scale of pay by one stage is proportionate. It cannot be said that it grossly disproportionate to the gravity of the proved minor misconduct. So under such circumstances, there is no scope for this Tribunal to interfere with the quantum of punishment on the application of the principle that the punishment is grossly disproportionate to the quantum of delinquency obviously referable to Section 11A of the Industrial Disputes Act, 1947, as it has been held by the Hon'ble Supreme Court of India in a case reported as 2001 (1) LLJ 1330 TIRUPURA GRAMIN BANK AND OTHERS Vs. TARIT BARAN ROY AND ANOTHER. It is not disputed that the service conditions of the employees like the concerned workman is governed by the various Bipartite Settlements. Hence, this Tribunal cannot invoke the extraordinary power under section 11A of the Industrial Disputes Act, 1947 to interfere with the quantum of punishment. The Hon'ble High Court of Andhra Pradesh has held in a case reported as 1999 (3) LLJ Supplement 1994 SATHIYANARAYANAMOORTHY Vs. GENERAL MANAGER (PERSONNEL) SYNDICATE BANK AND ANOTHER that "it is quite often reiterated by the Supreme Court and this Court that every bank employee is a trustee of the bank and the judicial intervention with the disciplinary action taken by the bank's management should be only in those cases, where the Court finds that the substantive procedure is in fracture or the findings recorded by the enquiry authority or the Disciplinary Authority were based on no evidence and the Petitioner was denied of a fair hearing before the Disciplinary Authority." In the present case, the learned representative of the petitioner Union has stated that he is not questioning the validity of the enquiry. The Hon'ble High Court of Punjab & Haryana has held in a case reported as 1994 (1) LLJ pg. 621 V K. VERMA Vs. HINDUSTAN MACHINE TOOLS LTD That "the absence from duty admittedly amounts to misconduct. The employee was found to be absent more than once, and he was virtually habitual absentee. In such a situation, if the management found that the employee deserve the punishment of dismissal, and did not find any extenuating circumstances to warrant the imposition of lesser penalty, no fault can be found with its action. The imposition of penalty is primarily matter for the appropriate authority to consider. It is not the matter to be decided by the High Court the employer having held that the Petitioner deserve to be dismissed and its action having been approved by the Tribunal, it would not be proper to interfere." In the present case, the punishment imposed upon the concerned workman is not dismissal from service, but it is a lenient punishment of reduction of his pay by one stage to lower stage in the time scale for a period of one year. Therefore, the punishment imposed upon the workman cannot be considered as a disproportionate to the proved charges. As it is held in a case reported as 1989 (2) LLJ 294 STATE BANK OF INDIA Vs UNION OF INDIA AND OTHERS "Section 11.1 of

Industrial Disputes Act, 1947 can be invoked only in cases where an industrial dispute relating to the discharge or dismissal of a workman has been referred to for adjudication. Whereas, in the present case, the punishment imposed on the concerned workman against whom the charges are held proved is very lenient and minimum. If this punishment also to be interfered by this Tribunal and the concerned employee to be let off without any punishment, then the entire exercise of conducting the enquiry and proving the man guilty will become a futile exercise. Under such circumstances, this Tribunal cannot be interfere with the punishment imposed against the concerned workman for the proved misconduct by the Respondent/Management, when especially the said punishment is very minimum and lenient when compare with the proved charges. Therefore, it can be held that the action of the management of Vijaya Bank in imposing the punishment of reduction of one stage in the time scale of pay on Sri J. Subramanian is legal and justified. Thus, the point is answered accordingly.

10 In the result, an Award is passed holding that the concerned workman Sri J. Subramanian is not entitled to any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day 24th June, 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents marked :—

For the I Party/Workman : Nil

For the II Party/Management

Ex. No.	Date	Description
W1	22.09.98	Xerox copy of the charge sheet issued to the concerned workman by the Respondent/Bank
W2	12.11.98	Xerox copy of the letter submitted by the Concerned workman to the Deputy General Manager
W3	30.11.98	Xerox copy of the letter of the Disciplinary Authority to the concerned workman
W4	20.12.98	Xerox copy of the letter from the concerned workman to Disciplinary Authority
W5	14.01.99	Xerox copy of the enquiry proceedings
W6	19.02.99	Xerox copy of the order of Disciplinary Authority
W7	05.04.99	Xerox copy of the appeal preferred by the concerned workman before the Appellate Authority
W8	26.05.99	Xerox copy of the order of Appellate Authority
For the II Party/Management		Nil

नई दिल्ली, 5 जुलाई, 2002

का.आ. 2484.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन एयर

लाईस लि. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. I, मुम्बई के पंचाट (संदर्भ संख्या 40/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-7-02 को प्राप्त हुआ था।

[सं. एल-11012/30/99-आई.आर. (सी-1)]

एस.एस.गुप्ता, अवर सचिव

New Delhi, the 5th July, 2002

S.O. 2484.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40 of 1999) of the Central Government Industrial Tribunal I, Mumbai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Indian Airlines Ltd. and their workman, which was received by the Central Government on 4-7-02.

[No. L-11012/30/99-IR (C-I)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, MUMBAI

Present

Shri Justice S.C. Pandey,
Presiding officer

REFERENCE NO. CGIT-1/40 OF 1999

PARTIES: Employers in relation to the Management of M/s Indian Airlines Ltd.

AND

Their workman Shri R.P. Jolly

APPEARANCES:

For the Management : Mrs. P.A. Kulkarni, Advocate

For the Workman : Shri M.B. Ancham, Advocate

State : Maharashtra

Mumbai, dated the 5th day of June, 2002

AWARD

The Central Government, in exercise of its power conferred by clause (d) of sub-section 1 read with sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) has referred the dispute between the management of M/s. Indian Airlines Ltd., and its workman for adjudication by this Tribunal in the following terms.

“Whether the action of the management of Indian Airlines in dismissing Sh. R.P. Jolly from service vide order dated 12-10-1993, is legal, proper and justified? If not to what relief the workman is entitled?”

2. The Indian Airlines Ltd. (the employer for short) had dismissed Shri R.P. Jolly (the workman for short) vide order dated 12-10-1993 after holding a domestic enquiry on the charges framed by it and finding him guilty of

misconduct. The workman raised an industrial dispute questioning the validity of the enquiry and his consequent dismissal. Accordingly a reference on the aforesaid terms was made.

3. The workman in his statement of claim raised the following questions regarding the validity of enquiry and sought that order for dismissal be set aside at this preliminary stage. It is not necessary to give all the facts of the dispute for stating the preliminary points raised on behalf of the workman only relevant facts are being stated. It is alleged that there was violation of principles of natural justice because the workman was not given a reasonable opportunity of hearing and the enquiry officer was biased against him. It was also contended that the findings recorded against the workman are perverse and there was no legal evidence to support them.

4. The employer contends that the reference is bad because of delay and controverts the aforesaid points regarding the validity of enquiry. It appears that preliminary issues were not framed on 14-12-2001, due to oversight. On 26-12-2001, only one additional issue was framed. But both the parties have filed affidavits assuming that preliminary issues were framed and cross-examination of the witnesses was done on that basis. Therefore it would be proper to at this stage to frame the preliminary issues. Thus the issues on the preliminary points are as follows:

(A) Whether the domestic enquiry held against the workman could be set aside for the violation of principles of natural justice.

(B) Whether finding regarding the misconduct against the workman can be treated as perverse?

(C) Whether there is delay in raising the dispute and for this reason the reference liable to be rejected as not maintainable.

5. In order to decide the aforesaid issues it would be necessary to state the minimum facts essential for determining the controversy. It was alleged in the charge sheet dated 13/14-12-1992, that the workman was found to be in possession of contraband goods worth Rs. 1,78,200 while coming from Hongkong on 18-2-1990 by the customs authorities. By an order dated 26-11-1990 the Additional Collector Customs confiscated the contraband goods seized from the possession of the workman. He was required to pay a fine of Rs. 20,000. He was kept under arrest from 19-2-1990 and was released on bail on 20-2-1990. On these facts the workman was charged with the breach of standing order Nos. 1, and No. 2 and for committing misconduct within the meaning of standing order 16(1), 16(4), 16(8) and 16(39) of the Standing Orders (Regulations) concerning discipline and Appeals. It was charged that he went to Hongkong without obtaining any sanction of his leave. He suppressed that he was under arrest. The Leave was sought on 5-3-90, claiming it to be a privilege leave. It was mentioned that the workman proceeded out of station without disclosing that he was going to Hongkong.

6. The reply dated 4-3-92 given by the workman for the charge sheet was found not acceptable. An enquiry was ordered by the disciplinary authority of the workman Mr. V.K. Govil the Chief Technical Officer was appointed as the enquiry officer. Before the workman had denied that he went to Hongkong without sanctioned leave. It was alleged

by him that at the customs enclosure he had met one of his friend who had asked him to look after his baggage. The friend disappeared and the customs authorities wrongly thought that the goods belonged to him. The result was that he was implicated in the offence. Thereafter the enquiry was held against the workman. It is now being alleged that there was violation of the principles of natural Justice. It is true that an ex parte judgement dated 7-9-99, was given by this Tribunal against the workman holding that the principles of natural justice were not violated while deciding the application under Section 33(2)(b) of the Act. However that judgement is of no consequence for determining the reference. It is not *res judicata*. This Tribunal shall not rely upon the judgement dated 7-9-1999, for any purpose. Now this Tribunal must satisfy itself for the purpose of this adjudication if the workman was given adequate opportunity. It has been argued on behalf of the workman that the entire enquiry shows the bias of the enquiry officer inasmuch as reasonable request for adjournment was refused by the enquiry officer. It is alleged that the case was fixed on 26-5-92, though the workman was on leave. On 18-4-92, It was observed by the enquiry officer that the workman should not have proceeded on leave and case was fixed for 26-5-1992. A perusal of these order sheets of the enquiry would indicate that the first hearing was on 26-5-92. The workman appeared. Nothing substantial happened on that date. Therefore the grievance of the workman is of no consequence even if some words were uttered by the enquiry officer on 18-4-1992 while fixing the case of 26-5-1992. On 28th July 1992, the next date the workman appeared and he was formally asked regarding the charges and the case was adjourned to 24-8-1992. On that date the employer sought to examine one witness. Miss Asha Kopal (MW1). A request was made by the workman for adjournment on the ground that his friend Mr. Jacob was not available. It was not accepted. It appears to this Tribunal mere refusal of adjournment would not show any bias. Nor was the workman in any way substantially prejudiced. Mrs. Kopal was mere a formal witness and was examined for showing that workman's leave application was not properly granted. The workman himself could cross-examine her and he did so. No prejudice has been caused to him. It has also been argued that the workman was not given full opportunity to cross examine this witness. However the record belies this statement of the workman and his statement in affidavit that he was mentally disturbed is also contrary to record of the enquiry and appears to be an after thought. This Tribunal does not find any merit in the argument that the workman was denied of fair and reasonable opportunity. On the other hand even in the presence of his friend Mr. Jacob, the workman himself cross examined the witness MW 2, P.D. Kale and MW 4, C.B. Gaitonde. The questions put in cross-examination of these witnesses shows that the workman was of sound mind. It would have been otherwise if the workman mentally unsound. The questions put to by the workman also show that he was sound in mind. This Tribunal therefore comes to the firm conclusion that the principles of natural justice were not violated. In cross examination the workman himself could not deny this factual position. On the other hand Shri V.K. Govil has not been shaken in cross-examination and he proved that no irregularity was committed by him during the course of enquiry.

6. The next argument is that the finding of fact recorded by the enquiry officer are perverse. In that case the workman did not dispute that he went to Hongkong. He also does not dispute that customs authorities held that he carried contraband goods. The defence of the workman was that he was not guilty as the baggage belonged to his friend. This defence could be proved by examining the friend whose baggage he was looking after. The workman, could have examined him to prove his case. That he did not do. Now this Tribunal can not sit in appeal over the findings of the enquiry officer. This Tribunal is required to look into the matter from the point of view of a reasonable man. The test is whether reasonable man could come to conclusion as the enquiry officer did. The answer is there is overwhelming material on record for coming to that conclusion. In opinion of this Tribunal nothing turns on the question if there any discrepancies in the documents filed before enquiry officer and the Criminal Court. Nor was it necessary to file original papers filed in the Court the enquiry proceedings. No objection was taken when the documents were placed on record in the enquiry proceedings. After considering the entire proceedings of enquiry this Tribunal does not find that the findings of the enquiry officer are in any way perverse.

7. This Tribunal also finds that sentence imposed upon the workman was proper.

8. The result is that there is no merit in the case of the workman that the enquiry was in any way vitiated and that he was improperly punished by order dated 12-10-93. This Tribunal gives this award by answering this reference against the workman and in favour of the employer. It holds that the dismissal of the workman by order dated 12-10-1993, was proper and justified.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 5 जुलाई, 2002

का.आ. 2485.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई.बी.पी. लि. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. I, मुम्बई के पंचाट (संदर्भ संख्या 32/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-07-2002 को प्राप्त हुआ था।

[सं. एल-30012/15/96-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 5th July, 2002

S.O. 2485.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/1997) of the Central Government Industrial Tribunal No. I, Mumbai now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of IBP Ltd. and their workman, which was received by the Central Government on 4-7-2002

[No. L-30012/15/96-IR (C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL
TRIBUNAL NO.1, MUMBAI

Present

Shri Justice S.C. Pandey,
Presiding Officer

REFERENCE NO. CGIT-32 OF 1997

Parties : Employers in relation to the Management
of I.B.P Ltd, Mumbai

AND

Their workman Shri P.N. Surve

APPEARANCES :

For the Management : Shri A.H. Patel, Advocate

For the Workman : Shri Nabar, Advocate

State : Maharashtra

Mumbai, dated the 10th day of June, 2002

AWARD

1. This reference is made by the Central Government to this Tribunal in exercise of the powers conferred by clause (d) of sub section 1 of Section 10, read with sub-section 2A of the Industrial Disputes Act (the Act for short) on the following terms :

“Whether the action of the management of I.B.P. Co. Ltd., Mumbai in terminating the services of the workman, Shri P.N. Surve, Security Guard w.e.f. 16-2-1995 is legal and justified ? If not, to what relief is the workman allowed ?”

2. Shri P.N. Surve (the workman for short) was working as a Security Guard in the establishment of I.B.P. Co. Ltd. Mumbai (the employer for short). The employer terminated the services of the workman on 16-2-1995 after holding a domestic enquiry wherein it was found that the workman was in league with a rag-picker woman, who was found in possession of ceiling fan taken out from the premises belonging to the employer of which the workman was the Security Guard.

3. The workman has stated that he was acquitted in criminal case filed against him. He was charge sheeted and the enquiry was held by appointing a legally trained lawyer with a view to get a favourable report. The enquiry officer violated the principles of natural justice and consequently a fair opportunity was not given to him. It is further pleaded in the statement of claim that there is no legal evidence to involve him in the misconduct for which he has been punished with dismissal. In other words the finding facts acted upon by the competent authority perverse.

4. These facts are contraverted by the employer. It is alleged that full and proper opportunity was given to the workman. The finding recorded is based on legal evidence. It is not perverse. The workman is punished rightly for permitting the rag-picker to enter the room under his control from the point of view and take the ceiling fan belonging to a contractor of the employer. The fan was kept by the contractor in the premises for his own purpose. It was argued that the case be decided on preliminary points as

the evidence was led only on preliminary points.

5 A rejoinder was also filed on behalf of the workman stressing the major points which would be ordinarily subject matter of final award.

6 It appears on 12-1-1999 no issues were framed. However, the counsel for the parties agreed that at this stage the parties had filed affidavits only on preliminary issues and they had closed their cases after respective cross examination for decision on preliminary points. This Tribunal is of the view it would be proper to frame the following preliminary issues for the purposes of the award in this case

“1. Whether the workman has proved by evidence on record that the principles of natural justice were violated and that he was not given a reasonable opportunity defend himself ?”

2 Whether the finding arrived at by the enquiry officer in his report could be said to be perverse or based on no legal evidence. ?

3. Whether the competent authority should have awarded the punishment of dismissal on the basis of the report of the enquiry officer even if it be acceptable in toto ?”

7. The findings on issue No. 1 are now discussed hereinafter. The workman has not placed any material on record to support his assertion in the statement of the claim that the enquiry officer was biased in favour of the employer. Merely because he was trained lawyer it cannot be said that he would show bias against the workman. The workman says the questioning the rag-picker who was examined as a defence witness amounted to show bias in favour of the employer. This Tribunal is of the opinion that the question if rag-picker was deposing before the enquiry officer with a view to support the workman on account of some interest, pecuniary or otherwise, was a very pertinent question. In this context certain questions were asked from the witness and they cannot be said to show bias against the workman. The workman had examined the witness. Therefore if opposite party put the question how she come to know about the date of other evidence etc, and who informed her was a relevant question for showing that possibility of her having a tutored witness cannot be ruled out. From the conduct of the enquiry no bias as such is referred. The workman had agreed that he was given full opportunity to defend himself in cross examination. However this Tribunal has gone through the entire enquiry proceeding and has found that the enquiry was fairly and justly conducted. The enquiry officer did not misconduct the proceedings of enquiry. Nor did he misconduct himself in any manner. Therefore issue No. 1 is decided against the workman by saying he is unable to prove it.

8 The issue No. 2 relates too question if the findings of fact, recording by the enquiry officer, that the workman was guilty of the misconduct was based on no legal evidence or otherwise perverse. In this connection the acquittal of workman was highlighted during the course of arguments. It was argued that this circumstance by itself is enough to give a discharge to workman in the enquiry held against him. The point so raised bears examination. It appears from the certified copy of the order sheet dated 29-11-95 in C.C.

No. 137/P/94 that Additional Chief Metropolitan Magistrate 5th Court, Dadar, Bombay discharged the workman after going through the police papers. It appears that the learned Magistrate was of the view that alleged offence under Section 379 read with 114 of the Penal Code was not made out. It has been argued on behalf of the workman that the order of the Criminal Court is by binding on this tribunal. In the opinion of this Tribunal the workman was merely discharged for want of material to proceed further in respect the alleged offences under Section 379 and 114 of the Penal Code. The charge-sheet in the domestic enquiry related to the following four charges :

- “1. 25(d)—Theft/Fraud or dishonesty in connection with the Employer business or property.
2. 25(e)—Taking or giving bribes or any illegal gratification.
3. 25(1)—Commission of an act subversive of discipline or good behaviour on the premises of the establishment.
4. 25(m)—Habitual neglect of work or gross habitual negligence.”

It is apparent that the scope of the domestic enquiry was much wider. It appears that there is some misconception regarding the order of acquittal vis-a-vis-a domestic or departmental enquiry. There is no law that the acquittal in a criminal case as a matter of law results in dropping of an enquiry in cases of service or industrial misconduct. In limited class of cases, where the misconduct is inextricable and intimately connected with crime, and the charges in both the criminal cases and the enquiry overlap, then a clean or honorable acquittal may exonerate the workman or the delinquent. In other cases it has been held that the judgement in a criminal case is not binding on the enquiry officer or the court or the Tribunal. The order of acquittal is merely a piece of evidence. In this connection this Tribunal finds that in the case of *Narayan Kutty Vs. State of Kerala* 1997 II CLR 126 has correctly summed up the import of the decision of Supreme Court in *Corporation of Nagpur City Civil lines Vs. Ramachandra* 1981 (2) SCC 7124, *State of Rajasthan Vs. B.K. Meena* 1996 (8) SC 634 reads as follows :

“The position emerging from the discussion in these decisions is as follows :

There cannot be any universal principle that once a criminal court acquits an accused no departmental action is possible thereafter. Even after the acquittal of the delinquent employee it will be open to the departmental authorities to pursue the disciplinary action. This is because the facts of the case may not constitute an offence under the Criminal Law. But the same facts may be termed as misconduct under the Service Rules. Moreover, strict rules of evidence are not applicable to domestic enquiries. At the same time, in a criminal case, strict order of proof is necessary for convicting an accused. In the normal course when an accused is acquitted on merits it would not be proper for the departmental authorities to conduct an enquiry on the very same charges and on the very same evidence. Another factor which has to be weighed with to the authorities before

proceedings to time action departmentally is the time lag between the incident and the action proposed to be taken. The departmental authorities must definitely take into consideration the fact whether it is really worthwhile to continue the departmental enquiry in the event of the acquittal of the employee.”

However in this case the workman was discharged and therefore, there was no impediment in continuing with the enquiry. The police may not have placed enough material in its investigation for making out a *prima facie* case. However the order does not amounts to honorable or clean acquittal after weighting evidence on record on the part of Additional Chief Metropolitan Magistrate. Further the charges are different. In the opinion this Tribunal the aforesaid reasons are enough for rejecting this limb of the argument.

9. The next limb of the argument is that the finding fact in respect charge No. 1, charge No. 3 and partial finding in respect of charge No. 4 that the workman is guilty of “gross negligence” is perverse. Before we enter into discussion it would be proper to recall the basic events culminating in the framing of on the charges against the workman on 31-1-1994. The workman was on duty on 2-1-1994 between 8 a.m. to 4 p.m. at tern from area of Wadala terminal belonging to the employer. It was alleged that Laxmi, a rag-picker was allowed to enter the premises which the workman was supposed to guard. She was clandestinely permitted to enter from rear gate which was made for the use of the contractor of the employer. It was alleged that workman spent some time with her and thereafter helped her to get out. As a parting gift a ceiling fan belonging to the contractor was permitted to be taken by the woman. However the woman was caught red handed by another watchman and she was handed over to the police passing in a patrol jeep. She was taken to the police station where at about 5 p.m. she confessed that the ceiling fan was given to her by the workman and she was asked by him to meet him at 4 p.m. at Sewri Railway Station. On 3-1-1994 the employer received a report on behalf of the contractor that a ceiling fan was missing from the shed. Thereafter Shri A.K. Gupta Asstt. Manager (Security) of the employer asked the workman to make clean breast of everything that had transpired. Initially the workman denied his misconduct but subsequently gave in and confessed to his misdeed as alleged by the woman and pleaded for mercy. On 8-1-1994 the workman was produced before the Court under arrest. He was released on bail. It was alleged that ceiling fan was identified on behalf of contractor by his employee Shri Promad Nair, who was the complainant regarding the theft of the fan.

10. The workman had denied the allegations against him. He asserted before the enquiry officer that the fan may belong to company but he was not responsible for its theft. He asserted that the FIR against him was false. He was liable to be discharged. He denied that he had made any confession as alleged. He claimed that none of the charges could be proved against him.

11. This enquiry officer had found that the charges No. 1 and charge No. 3 now proved fully. Charge No. 4 was proved to the extent of gross negligence. The charge No. 2 was not proved. All the three charges no. 1, 3 and 4 are interconnected and therefore, they will be dealt with at this

stage together. There were 7 witnesses examined before the enquiry officer. There is evidence of Shri S.K. Suryavanshi that on 2-1-1994 he was on duty at the Tank No. 2 of Farm Area of Wadala terminal. The workman was also posted on duty on 2nd January 1994. This fact that on 2nd January 1994 the workman was performing his duties in the same area at Gate No. 1 is not in dispute. He says that during the course of his duty he saw the workman with a woman at rear gate (gate No. 2). The time was about 12.25 p.m. when he returned to the rear gate after taking his lunch the woman was not there. In examination in chief the witness admitted that he came to know about the theft of the fan on 3-1-1994. However he gave the information in writing on 5-1-1994 after two days and admitted in cross examination that he came to the office to hand over the statement on 5/11/1994 as he was proceedings on leave. One thing is established from evidence that he was around the place of misconduct when the theft took place and so also the workman. He had given in writing that he had seen woman with the workman on 2-1-1994. It may be seen that witness could also be a suspected of theft and that he took at least two days to report the matter. Independently his evidence may not be of any value but his evidence was treated by the enquiry officer as a corroborative piece of evidence. It appears that the enquiry officer has relied upon the evidence of Shri A.K. Gupta who had examined himself as a witness, first being the presenting officer. Shri A.K. Gupta Asst. Manager Security had stated that the workman given two statement in Marathi and Hindi (Ex. 6 and 7) respectively admitting the fact that he had caught the woman at the rear gate and allowed her to go. The further confession according to Shri A.K. Gupta was made before senior terminal Manager Thomas orally in his presence. The enquiry officer held that version of A.K. Gupta remained unchallenged in cross examination and no evidence was had in rebuttal. After three days the workman wrote Ex. 20 withdrawing the confession. Further evidence was that of A.H. Surve who had stated that he had seen the workman actually handing over the fan to the rag-picker. After thorough examination of the statement of this witness in the light of photographs, the enquiry officer concluded that there was sufficient evidence for coming to the conclusion that the workman allowed the woman to enter the premises, remained with her, and then gave her the fan. He found further corroboration from Deshmukh. The aforesaid two were the main witnesses. The workman examined the woman Laxmi Sellappa herself who stated that workman was not real culprit. The man involved was one Surve who was a Muslim Gentleman. The witness admitted that defence counsel Shetty called her to depose before the enquiry committee. It appears that the enquiry officer was not very much impressed by the version of this witness and drew adverse inference against her. It is apparent that the enquiry officer forget the fact that the witness could be summoned in a court of law but he had no such power to summon witness. Therefore defence is bound to approach a defence witness for rebutting the evidence led in a domestic enquiry. The enquiry officer should not have made much of it. However this instance shows that on mind gets stereo typed and does not change with the changing situation. This error on the part of the enquiry officer in making the testimony of Laxmi Sellappa does not make the finding of fact perverse. After careful examination of evidence of Laxmi Sellappa and the rest of

the discussion of her evidence this Tribunal is of the opinion that the enquiry officer could have reached the conclusion as he did. The finding of fact is based on the preponderance of probabilities. This Tribunal cannot upset and reweigh the findings recorded by the enquiry officer, merely because on one of the preponderance of probabilities the enquiry officer had made an error. Once the charge no. 1 is proved the charge nos. 3 and 4 are also proved to the extent found by the enquiry officer. This Tribunal is not discussing the evidence of other witnesses and the defence witnesses. However after going through their evidence it could not be said that the findings of the enquiry officer are perverse or that there is no legal evidence to support the conclusion of the enquiry officer. The evidence led before this Tribunal by the workman does not prove otherwise. On the other hand it appears that a detailed enquiry was made by the employer wherein 7 witnesses examined on behalf of it and they were duly cross examined. The workman examined. The workman was permitted to examine Laxmi Sellappa, Santosh, Rajaram, Nanankar and Sabirput D. Nanku. The evidence of these witness was not accepted. It appears that the workman did not examine himself in his own defence. Looking to totality of circumstances, without discussing the evidence of each and every witness this Tribunal is of the opinion that the detailed enquiry report running into 40 typed pages cannot be assailed on the ground that on finding recorded in that report were perverse. Accordingly the issue No. 2 is decided against the workman and inform of the employer by saying that the findings on each charge do not appears to be perverse. This Tribunal has refrained from discussing the evidence as if it was setting in appeal. It has examined the findings with a view to find out if they are perverse. It has not gone into unnecessary details.

12. As to the question of punishment is concerned this Tribunal cannot take a lenient view of the matter. The charges speak for themselves. The dereliction of duty on the part of the workman cannot be condoned in any manner. Accordingly this Tribunal finds that the punishment given to the workman was proper and correct. The authorities cited at the bar on either side need not be cited in this award for the reason this tribunal has found against the workman on facts.

13. Before parting with the case it is necessary to observe that in a domestic enquiry of a witnesses should not be appointed as a presenting officer. In this case Mr. A.K. Gupta is the officer who was interested in proving the confession and should have definitely wanted that his evidence should be believed. Now apart from the departmental interest, the presenting officer has personal interest in proceeding that the Tribunal should believe his testimony. Such a person in a genuine case could be a dangerous person. He could build up a case against the workman for buttressing his own statement. This is none of his duties. Therefore a witness as it rule should not be appointed as a presenting officer. This point is not being dwelt upon further as it was not objected to before the enquiry officer or this Tribunal. The employer in general are being given an advice to the effect that a major or the principal witness deposing about the merits of charges should not be appointed as a presenting officer. However in this case this Tribunal declines to consider this point because it was never raised.

14. Accordingly this reference is answered by saying that the action of the employer in terminating the services of the workman Shri P.N. Surve, Security Guard, from 16-2-1995 is legal and justified. The workman is not entitled any relief.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2486.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एयरलाइंस के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में लेबर कोर्ट, एर्नाकुलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-20030/23/95-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 16th July, 2002

S.O. 2486.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Ernakulam as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Indian Airlines and their workman, which was received by the Central Government on 15-7-2002.

[No. L-20030/23/95-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT,
ERNAKULAM

(IN THE LABOUR COURT, ERNAKULAM)

(Wednesday, the 29th day of May, 2002)

PRESENT:

Smt. N. Thulasi Bai, B.A., LL.B., —Presiding Officer
Industrial Dispute No. 24 of 1996 (Central)

BETWEEN

The General Manager, Indian Airlines Limited,
Madras.

AND

The workman of the above concern Sri. A. L. Joseph,
Achandy House, Chalakudy.

REPRESENTATIONS:

M/s. Menon and Pai,
Advocate,
Ernakulam. —For Management

Sri C. Anil Kumar,
Advocate,
Ernakulam —For Workman

AWARD

This reference was made by the Central Government as per letter No. 20030/23/95-IR (Coal-I) dated 11-10-96. The dispute was between the Indian Airlines Limited, Airlines House, Madras represented by its General Manager (Personnel) and their workman Sri. A. L. Joseph. The dispute referred is:

"Whether the action on the part of the management of Indian Airlines, Cochin in terminating the service of the workman, Sri. A. L. Joseph w.c.f. 6-10-1994 is justified? If not, to what relief is the said workman entitled?"

2. Pursuant to notices issued from this court both the workman and management appeared through counsel.

3. Workman filed a claim statement raising the following claims:—The workman joined the services of the management on 9-10-1984. Even though his appointment was as a sweeper, he was designated as a loader. Mostly he was deputed to clean aircrafts during his service. On 29-7-1993 the workman was asked to clean the Cargo Section. Since this work was not a part of his regular duty and he was never asked to do such a job earlier, the workman expressed his unwillingness to do the above additional work. As there was no practice of allotting additional work the workman was under the impression that he was not bound to do the additional work. On his refusal to do the cleaning of the cargo section, the workman was placed under suspension on 30-7-1993. Later on he was served with a charge sheet dated 22-9-1993. The allegation against the workman was wilful insubordination or disobedience and act subversive of discipline. The workman gave an explanation to the charge sheet which was not accepted by the management and the management ordered a domestic enquiry against the workman and Sri M. Janardhanan, Deputy Manager (Personnel Service) was appointed as the enquiry officer. The conduct of the enquiry was in violation of the principles of natural justice. The enquiry officer was biased and was acting under instructions from the management. The workman was not given the effective opportunity to participate in the enquiry. The proceedings were conducted ex parte making the workman impossible to attend the sitting. As per report dated 29-4-1994 the enquiry officer found the workman guilty of the misconducts alleged. Accepting the report of the enquiry officer the management removed the workman from service w.c.f. 6-10-94. The findings of the enquiry officer are against the facts and circumstances of the case and are unsustainable and perverse. The punishment of removal from service imposed on the workman is highly disproportionate to the charge alleged. So the workman prays for passing an award setting aside the punishment and directing the management to reinstate the workman with full back wages, continuity of service and other consequential benefits.

3 Management filed a written statement raising the following contentions.—Sri. A. L. Joseph, the workman involved in the present case was appointed as sweeper which is now redesignated as safaiwala under the management at Cochin on 9-10-1984. He was promoted as safaiwala (senior) in the pay scale of Rs 1185—1555 and

he continued to be in the same pay scale with the same designation. While so as per letter dated 31-3-1990 he requested the management to change his designation as loader by absorbing him in one of the vacancies of loaders. In the letter he mentioned that his designation was automatically changed as loader in the pay slips. On receipt of the letter the matter was looked into and on verification it was found that due to code punching error his designation was shown as loader. The workman filed a writ petition before the Honourable High Court as O. P. 10107/90 seeking to quash the proceedings of the management where under he was directed to be employed as a scavenger and for a declaration for employing him as a loader. The Honourable High Court as per judgment dated 30-11-1994 dismissed the writ petition. In the above judgment the Honourable High Court found that Sri Joseph was appointed only as a sweeper and the documents filed by the management amply proved its stand. The duties and functions of safaiwala were fixed as per settlement dated 1-4-1967 entered between the management and Air Corporation Employees Union, in which the workman was a member. On 29-7-1994 the workman was on duty at the Air Port. On a complaint from the cargo-in-charge that the cargo section was not cleaned by the safaiwala the workman was directed by Sri V. K. Ranganathan, duty officer to clean the cargo section on that day. The workman refused to do the work stating that it was not his duty. When he was asked by Sri S. C. Mandal, Air Port Manager to clean the cargo section it was also not complied by the workman. So he was instructed by the Station Manager as per his letter dated 30-7-1993 to carry out the orders and instructions given to him. Thereafter when the Air Port Manager had directed the workman to clean the Indian Air Lines premises, especially the cargo section, the workman refused to comply with the said order stating that it was not his duty and he will not do the same. On the basis of the above disobedience charge sheet dated 22-9-93 was issued to the workman under the relevant provisions of the standing orders. The workman was asked to submit his written statement of defence. Accordingly the workman submitted his explanation dated 11-10-1993 which was found as not satisfactory. So the management ordered an enquiry into the charges levelled against the workman and Sri M. Janardhanan, Deputy Manager (Personnel Services) was appointed as the enquiry officer. The enquiry proposed to be commenced on 21-1-1994 at 2.30 P.M. in the office of the Station Manager, Cochin. The workman made a request to permit him to avail the assistance of Sri A. Vijayan during the enquiry which was allowed by the enquiry officer. Thereafter on several occasions the enquiry was adjourned at the instance of the workman. In spite of several adjournments at the convenience of the workman he did not participate in the conduct of enquiry thereby the enquiry was forced to be completed as ex parte. To provide chances for cross examining the management witnesses, the enquiry officer sent copy of chief examination made in the absence of the workman in spite of which the workman was not willing of cross examine the witnesses. Thus it is clear that the workman did not participate in the enquiry in spite of ample opportunities given to him. After completing the enquiry, the enquiry officer submitted his report on the basis of the materials made available during the enquiry and found that the workman was guilty of the charges levelled against him. A copy of the report of the enquiry officer together

with proceedings of the enquiry was furnished to the workman for making his representation against the findings and the workman submitted his reply as per letter dated 14-7-1994. The competent authority after considering the proceedings of the enquiry report and findings of the enquiry officer and the representation of the workman concurred with the findings of the enquiry officer and issued a show cause notice dated 22-8-1994 regarding the proposed punishment of removal from service. The workman submitted a reply dated 1-9-1994 and after considering his reply and the seriousness of the charges, the competent authority passed the order dated 6-8-1994 removing the workman from service with immediate effect. In view of the pendency of the industrial dispute before the National Industrial Tribunal, Bombay the punishment was imposed after obtaining approval. The workman was asked to clean the cargo section and he refused to do the work in spite of explaining that it was part of his job. The job assigned to the workman was not an additional work but it was purely a part of his functions as safaiwala. According to the management the punishment awarded to the workman is proportionate to the gravity of misconduct proved against him and so the management prays for passing an award holding that the removal from service of the workman is valid and proper.

4. No rejoinder was filed by the workman.

5. Since the removal of the workman from service was pursuant to a domestic enquiry, the propriety of the enquiry is sought to be substantiated by the management by adducing evidence which consists of the testimony of the enquiry officer as MW1 and Ext. M1, the enquiry proceedings including the enquiry report. The workman himself has given evidence as WW1. At the time of hearing the workman's counsel conceded that though the enquiry was conducted as ex parte, he does not challenge the propriety of the enquiry report, but he limits his claim for interference on the punishment imposed by invoking Section 11A of the Industrial Dispute Act. So the points arise for determination are :

- (1) Whether the punishment imposed on the workman requires interference by invoking Section 11A of the Industrial Disputes Act ?
- (2) What is the relief if any entitled to the workman?

6. Points :—Sri A. K. Joseph, workman involved in the present case, was working as a sweeper under the management w.c.f. 9-10-1984. The post of sweeper was redesignated as safaiwala and he was promoted as safaiwala (senior) w.c.f. 31-12-1991. In view of the wrong entry in his pay slips as loader, the workman requested the management as per letter dated 31-3-1990 to change his designation as loader by absorbing him in one of the vacancies of loaders. The management identified that the reference in the pay slips as loader was due to code punching error. Then the workman filed a writ petition as O.P. 10107/90 before the Honourable High Court of Kerala seeking to quash the proceedings of the management under which the workman was directed to be employed as a scavenger and for a declaration for employing him as a loader. The Honourable High Court dismissed the O. P. as per judgment dated 30-11-1994 finding that the workman was appointed only as a sweeper. On 29-7-1993 the

workman was asked to clean the cargo section, at first by the duty officer and then by the Air Port Manager which was not obeyed by the workman stating that it was not his duty. So he was instructed by the Station Officer as per letter dated 30-7-1993 to carry out the instructions given to him and to clean the Indian Airlines premises, especially the cargo section. The workman again refused to comply with the above order stating that it was not his duty and he will not do the same. On the basis of the above disobedience a charge-sheet dated 22-9-1993 was issued to him. As the explanation offered by the workman was found to be not satisfactory, an enquiry was conducted into the charges through MW1. MW1 conducted enquiry and filed Ext. M1 report and enquiry proceedings finding that the management had established the misconduct of disobedience alleged in the charge. Though more than sufficient opportunities were provided to the workman to participate in the enquiry and to avail the assistance of a co-worker, he has purposely avoided participation in the conduct of enquiry. The management relies on the oral evidence of MW1 and Ext. M1 to prove that the enquiry was conducted complying the legal formalities including natural justice and the finding of the enquiry officer is based on legal evidence. Though the workman challenged the propriety of the enquiry in the claim statement, at the time of argument the workman's counsel fairly conceded that the enquiry conducted in the present case by MW1 is proper and fair and the findings of the enquiry officer are based on materials before him. His only grievance at the time of argument is regarding imposing of extreme punishment of removal from service and so he prays for interference by this court in the matter of punishment by invoking the provision in Section 11A of the Industrial Disputes Act.

7. It was argued by the workman's counsel, relying on the decision reported in AIR 1989 Supreme Court 149 that the workman involved in the present case should be given an opportunity to reform himself and to prove to be a loyal and disciplined employee of the management. It was also pointed out by the learned counsel that Section 11A of the Industrial Dispute Act confers powers on this court of interfere with an order of discharge or dismissal of a workman and to direct reinstatement of the workman on such terms and conditions as it may think fit, including the substitution of any lesser punishment as the circumstances of the case may require. But it was pointed out by the management's counsel that as the charge is misconduct on the basis of disobedience to do duty by the workman, the extreme punishment of removal from service is squarely proportionate and leniency if any, to the workman may prompt the other workers in the same category also to follow such recourse and it may affect the discipline of the workers of that category under the management. It was also pointed out by the management's counsel basing on the decisions reported in 1998(I) LLJ 68 and 1998(I) LLN 351 that as misconduct is proved against the workman he is not entitled to reinstatement with backwages but he is entitled to either reinstatement without backwages or backwages without reinstatement. Considering the circumstances and the legal dictums pointed out by both sides I think it just and proper to interfere with the punishment imposed on the workman and to direct the management to reinstate the workman without backwages

but continuity of service. Thus under these points it is found that though the management succeeded in proving the allegation of misconduct against the workman, the action on the part of the management in terminating the workman Sri. A. L. Joseph w.e.f. 6-10-1994 is found as not justified and the workman can be allowed to be reinstated without backwages but with continuity in service. Points are answered accordingly.

In the result, an award is passed directing the management to reinstate the workman without backwages but with continuity of service.

The award will take effect on the expiry of one month from the date of its publication in the Official Gazette.

Dictated to the Confidential Assistant, transcribed and typed out by her, corrected by me and passed this the 29th day of April, 2002.

Ernakulam. N. THULASI BAI, Presiding Officer

APPENDIX

Witness examined on the side of the Management :

MW1—Sri. M. Janardhanan.

Witness examined on the side of the Workman :

WW1—Sri. A. L. Joseph

Exhibits marked on the side of the Management.

Ext. M1—Enquiry file.

Exhibits marked on the side of the Workman : Nil.

नई दिल्ली, 8 जुलाई, 2002

का.आ. 2487.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 224/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-7-2002 को प्राप्त हुआ था।

[सं. एल-22012/185/99-आई.आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 8th July, 2002

S.O. 2487.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 224/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 8-7-2002

[No. L-22012/185/99-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 24th June, 2002

PRESENT :

K. Karthikeyan, Presiding Officer

INDUSTRIAL DISPUTE NO. 224/2001

(Tamil Nadu State Industrial Tribunal I. D. No. 179/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri P. Dhanakoti and the Management of Madras Port United Labour Union, Chennai.)

BETWEEN

The General Secretary, Madras Port United Labour Union—I Party/Claimant

AND

The Joint Manager, Food Corporation of India, Chennai.—II Party/Management

APPEARANCE :

For the Claimant—M/s. S. Senthilnathan,
M. Christopher & R. Murugabharathi,
Advocates

For the Management—Mr. M. Imthias, Advocate.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-22012/185/99/IR (CM-II) dated 30-8-99/31-8-99.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai, where the same was taken on file as I.D. No. 179/99. When the matter was pending enquiry in that Tribunal, Government of India, Ministry of Labour was pleased to order transfer of this case also from the file of Tamil Nadu State Industrial Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, this case has been taken on file as I.D. No. 224/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 8-2-2001 with their respective parties and to prosecute this case further. Accordingly the learned counsel on either side alongwith their respective parties have appeared and prosecuted this case further.

When the matter came up before me for final hearing on 14-5-2002, neither the I Party/Union nor their counsel present. Learned counsel for the II Party/Management alone present and after marking the documents filed on the side of the Respondent as Ex. M1 to M5, he advanced his arguments. Then the orders were reserved to decide the dispute on merits with the available materials and records.

Upon perusing the Claim Statement, Counter Statement, other material papers on record, the documentary evidence filed by the II Party/Management alone, after hearing the arguments advanced by the learned counsel for the II Party/Management alone and this matter having stood over till this date for consideration, this Tribunal has passed, on merits, the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the management of FCI Chennai in terminating the services of Sri P. Dhanakoti w.e.f. 6-6-96 is legal and justified ? If not, to what relief the workman is entitled ?”

2. The averments in the Claim Statement filed by the I Party/Claimant (hereinafter refers to as Petitioner) are briefly as follows :—

The General Secretary of the Madras Port United Labour Union has raised this dispute espousing the cause of the workman Sri P. Dhanakoti. The concerned workman bearing token No. 2259 joined the services of the Food Corporation of India (hereinafter refers to as Respondent) in the year 1977 as mazdoor. The concerned workman was terminated from service by the Respondent by an order dated 17-11-98 w.e.f. 6-6-96 under rule 19(4) of Standing Orders. Reasons stated for termination of the concerned workman was that he was absent from 6-6-96 without any information and due to long absence his services were terminated. The said Mr Dhanakoti was absent from duty because he was suffering from mental depression due to sudden death of his daughter Josephine Mary. He took treatment in Government Hospital. He recovered only on 28-8-98. He immediately reported for duty but the management replied that his services were terminated. He made representation to the management on 28-8-98 to reinstate in service and also stated the reason for his absence with relevant medical certificates. But no reply was given by the management. Being a member of the Petitioner Union, the Union made representation to the management by its letter dated 21-11-98 asking the Respondent to reinstate the workman who was terminated without following the rules laid down in the Standing Orders. Because, there is no reply from the Respondent, the Union raised the dispute before the Assistant Labour Commissioner (Central) Chennai. The management participated in the conciliation proceedings and filed their reply statement also. The Petitioner Union objected the reply statement and filed rejoinder to the reply of the management. The Assistant Labour Commissioner has submitted his failure report on 13-4-99. Hence, this dispute. The management has stated in their reply filed in the conciliation proceedings that they have sent a memo dated 23-8-97 to the workman asking him to report for duty, but there is no reply from the workman for the said memo. So, he was terminated from service. The reason for not sending reply for the said memo was

that he was not in a mental condition to send reply for the same. The termination is illegal, unjustified and contrary to the rules of the Standing Orders. No rules have been followed before terminating the service of the said workman Sri P. Dhanakoti. As per the rule 23(4) of Standing Orders of the Respondent, the Respondent should give charge sheet before terminating a workman from service and it should give sufficient time for the workman to give his reply and it should conduct enquiry proceedings, but nothing was done in this case. The reason for the absence of the workman is that he was suffering from mental depression due to his daughter's sudden death. He furnished necessary medical certificates from competent authority. But these materials were not considered by the Respondent. The termination is illegal, unjustified and contrary to the rules of the Standing Orders. No rules have been followed before terminating the service of the said workman P. Dhanakoti. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to hold that the termination of said P. Dhanakoti is illegal, contrary to the rules and unjustified and the Respondent may be directed to reinstate the concerned workman in service with full back wages, continuity of service and all other attendant benefits.

3. The II Party/Management, Food Corporation of India, Chennai (hereinafter refers to as Respondent) has filed the Counter Statement. The averments in the Counter Statement are briefly as follows :—

The concerned workman Sri P. Dhanakoti having token No. 2259 was employed as a worker in Food Corporation of India w.e.f. 28-8-78. He was absented himself for duty from 6-6-96 till 23-8-97 without any permission or prior intimation to the office of the Respondent. The Respondent/Management as per rule 19(4) of the standing orders, which was certified under the Industrial Employment Standing Orders, 1946 on 4-12-69 by the Regional Labour Commissioner, has taken action against the concerned workman in this case. The Respondent/Management issued a memo dated 23-8-97 directing the workman to report for duty immediately and informing him further that if he fails to report for duty, action will be taken against him as per Rule 12(3) and 19(4) of the Standing Orders. In spite of receiving the above said memo, the workman Sri P. Dhanakoti had not turned up for duty even after nearly three months and in view of that the Respondent/Management has terminated the service of the workman Sri P. Dhanakoti w.e.f. 6-6-96 vide order dated 17-11-97 by the Joint Manager (Operations) and the said order was also served on the worker on 21-11-97. Only after the lapse of six months from the date of service of termination order, the worker sent a letter on 21-8-98 offering himself for employment. The workman's contention that he was suffering from mental depression due to his daughter's sudden death cannot be a valid reason for his long absent for duty without any permission or prior intimation and in spite of receipt of the management's memo dated 23-8-97. The allegation in para 9 of the Claim Statement that the Respondent had not followed

Rule 23(4) of the Standing Order is incorrect. The above said provision of the Standing Order relates to conduct of the workers and for disciplinary action and they are not applicable to long absent of the workers without prior permission or intimation to the management it does not preclude the management from taking any action under Rule 19(4) of the Standing Order. The claim of the worker Sri P. Dhanakoti for reinstatement with back wages and other attendant benefits are devoid of merits and the action taken against the above said worker by the Respondent/Management is in accordance with the law and procedure which is vogue for a long time. Therefore, the Respondent/Management submits that there is no merit in the Claim Statement of the worker and the claim petition has to be dismissed with exemplary cost of the Respondent.

4. When the matter was taken up for enquiry, no one has been examined on either side as a witness. No documentary evidence has been let in on the side of the I Party/Claimant. The documents filed by the II Party/Management have been marked as Ex. M1 to M5. The learned counsel for the II Party/Management alone has advanced his arguments.

5. The point for my consideration is—

“Whether the action of the management of FCI Chennai in terminating the services of Sri P. Dhanakoti w.e.f. 6-6-96 is legal and justified? If not, to what relief the workman is entitled?”

Point :—

The concerned workman Sri P. Dhanakoti who was employed as worker in Food Corporation of India from 28-8-78 absented himself for duty from 6-6-96 to 23-8-97 without any permission or prior intimation to the office of the Respondent. He was terminated from service by the Respondent/Management of Food Corporation of India, Chennai, by an order dated 17-11-1997 w.e.f. 6-6-96 under Rule 19(4) of the Standing Orders. This has not been disputed by the Petitioner in his Claim Statement. But the Petitioner Union as Claimant would contend in the Claim Statement that the said Sri P. Dhanakoti was absent from duty because he was suffering from mental depression due to sudden death of his daughter Josephine Mary and he took treatment in Govt. hospital and that after recovery from illness on 28-8-98 he immediately reported for duty, but the management replied that his services were terminated. Though he made representation to the management on 28-8-98 with relevant medical certificate for the period of his absence for duty, no reply was given by the management. But in the Counter Statement, it is clearly stated that as per Rule 19(4) of the Standing Orders, any workman who absent himself for more than 15 consecutive days without leave or who remains absent for 15 consecutive leave beyond the period of leave originally granted or subsequently extended shall be deemed to have left the service without notice and his name will be removed from the list without further notice to him and that a memo dated 23-8-97 was issued by the Respondent/Management to the concerned workman directing him to report for duty immediately failing which action will be taken against him as per Rule 12(3) and 19(4) of the Standing Orders and that in spite of receiving the said memo, the concerned workman

had not turned up for duty even after nearly three months and that only after the lapse of six months from the date of service of the termination order on 21-11-97, the concerned worker sent a letter on 28-8-98 offering himself for employment. All these things have not been disputed by the Petitioner by way of any reply statement. Ex. M1 is the xerox copy of the memo dated 23-8-97 sent by the Respondent/Management to the concerned workman Sri P. Dhanakoti. In that memo, which was sent by registered post with acknowledgement due, the concerned workman was informed about the provision in the Standing Order about automatic removal of his name from the roll calls of Food Corporation of India for his staying away from duty without prior intimation for more than 15 days, with a direction to report for duty immediately. Ex. M2 is the xerox copy of the postal acknowledgement card evidencing that the memo under Ex. M1 sent to the concerned workman was duly received by him. Ex. M3 is the xerox copy of the order dated 17-11-97 issued by the Joint Manager (Operations) of the Respondent/Management Food Corporation of India for terminating the services of the concerned workman under provision of Rule 19(4) of the Standing Order w.e.f. 6-6-96, due to the continued long absence of the concerned workman without intimation and treating it as a misconduct on the part of the worker, in terms of the provisions contained in the Standing Order. The said order under Ex. M3 was also sent by Registered Post to the concerned workman which was received by the concerned workman on 21-11-1997. The xerox copy of the postal acknowledgement card evidencing the service of the termination order under Ex. M3 on the concerned workman is Ex. M4. Ex. M5 is the xerox copy of the Standing Orders for workman employed at Madras Harbour by the Joint Manager (Port Operations) Food Corporation of India, Madras. It is not disputed that the concerned workman absented himself for duty from 6-6-96 without any permission or prior intimation and only on 28-8-98 he offered himself for employment by sending a letter to the Respondent/Management. Though it is alleged in the Claim Statement of the Petitioner Union that the concerned workman was suffering from mental depression due to the sudden death of his daughter Josephine Mary for which the concerned workman took treatment in the Govt. hospital and recovered only on 28-8-98, no evidence worth considering oral or documentary has been placed before this Tribunal by the Petitioner Union or by the workman concerned, in support of the said averments in the Claim Statement. From the available materials, it is seen that the concerned workman absented for duty from 6-6-96 till he offered himself for duty on 28-8-98 as averred in the Claim Statement and he was absent during that period without any permission or prior intimation to the office of the Respondent/Management. So, after giving a memo under Ex. M1 by registered post to the concerned workman the Respondent/Management took action against the concerned workman as per Rule 12(3) and 19(4) of the Standing Orders, since the concerned workman had not reported for duty immediately as per the direction in the memo, in spite of the fact, that the memo has been duly received by him under the postal acknowledgement Ex. M2. The order passed by the Respondent/Management for terminating him from service under Ex. M3 also has been received by the concerned workman under the postal acknowledgement Ex. M4.

6. It is the contention of the Petitioner Union that the termination of the concerned workman from service is illegal, unjustified and contrary to the rules of Standing Orders and that no rules have been followed before the service of the said workman has been terminated and that as per Rule 23(4) of Standing Orders of the Respondent, the Respondent should give charge sheet before terminating a workman from service and ought to have conducted enquiry proceedings. For that, it is the contention of the Respondent in their Counter Statement that the said provisions of the Standing Order relates to conduct of the workers and for disciplinary action and they are not applicable to long absent of the workers without prior permission or intimation to the management and it does not preclude the management from taking any action under Rule 19(4) of the Standing Order. Under Rule 23 in the Standing Orders of the Respondent, provision has been made for the disciplinary action to be taken for the acts of misconduct by the workmen. Under that head 'disciplinary action', in Rule 23(4), it is mentioned that "no order of termination of employment by way of punishment for misconduct, shall be made unless the workman is informed in writing for the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and an enquiry is held in consonance with the principles of natural justice". Under the head 'termination of employment' in that Standing Order Rule 19(4) has been provided as follows :—

"Any workman who absents himself for more than 15 consecutive days without leave or who remains absent for 15 consecutive days beyond the period of leave originally granted or subsequently extended shall be deemed to have left the service, without notice and his name will be removed from the list without further notice to him."

From this, it is seen that for termination of employment of a workman who absent himself for duty, the Respondent/Management can follow the Rule 19(4) of the Certified Standing Orders under Ex. M5. The learned counsel for the Respondent has also argued that similar action taken by the Respondent/Management has been held by the Hon'ble High Court of Kerala as an action taken by the Respondent/Management as proper and it is not in violation of principles of natural justice. For this, he relied upon a decision of the High Court of Kerala reported as 2001(2)LLJ pg. 671 between BEEMA KUNJU and Food Corporation of India. In that case the Hon'ble High Court had held that "the whole purpose of the domestic enquiry is to assess the factual situation. Unless an action is not with reference to the factual situation, it might be in violation of the principles of natural justice mainly for want of opportunity to the workman. But the question is in the factual situation indicated above, where the workman never care to present himself for joining duty, after the sanctioned spell of leave, never enquired as to whether his application for extension had been granted never care to give proper address to the management, never responded to the communication sent by the management and finally not even promptly responded to the notice published in two newspapers, could it be said that there was a need for a domestic enquiry which obviously would not have made any difference. Merely for the sake of

enquiry, it is not necessary to conduct the same as an empty formality." Here, in this case, the concerned workman Sri P. Dhanakoti had received the memo under Ex. M1 as evidenced under Ex. M2 postal acknowledgement and he had not chosen to report for duty immediately and not even sent any reply to the Respondent/Management about his inability to report for duty. As it is observed by the Hon'ble High Court of Kerala in the above cited case, conducting an enquiry for the said admitted facts can only be an empty formality and there was no violation of principles of natural justice in not having conducted domestic enquiry before terminating the workman from service for unauthorised absence as per Rule 19(4) of Ex. M5 Standing Order. As it is held by the Hon'ble High Court of Kerala in that cited case, there was no need for domestic enquiry in the circumstances of this case also. So under such circumstances, it can be easily concluded that the action of the management of Food Corporation of India, Chennai in terminating the services of Sri P. Dhanakoti w.e.f. 6-6-96 is legal and justified. Hence, the concerned workman is not entitled for any relief. Thus, the point is answered accordingly.

7 In the result, an Award is passed holding that the concerned workman Sri P. Dhanakoti is not entitled for any relief.

No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 24th June, 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side None

Exhibits marked :

For the I Party/Claimant Nil

For the II Party/Management

Ex. No.	Date	Description
M1	23-8-97	Xerox copy of the memo issued by the Respondent to the concerned workman
M2	1-9-97	Xerox copy of the acknowledgement card.
M3	17-11-97	Xerox copy of the order of termination issued by the Respondent to the concerned workman.
M4	21-11-97	Xerox copy of the acknowledgement card.
M5	Nil	Xerox copy of the standing orders for workman of Madras Harbour (Port Operations) FCI.

नई दिल्ली, 8 जुलाई, 2002

का.आ. 2488.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एच. सी. आई. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 62/2के1) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2002 को प्राप्त हुआ था।

[सं. एल-22012/144/2000-आई.आर. (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 8th July, 2002

S.O. 2488.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman. Such was received by the Central Government on 5-7-2002.

[No. L-22012/144/2000-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I D. 62/2001

Sh. Dalbir Singh, C/o Sh. Krishan Lal, S/o Sh. Raj
Kumar Taliya, Model Town, Bhattu Mandi,
Distt Fatehbad, PIN-125053 —Applicant.

Vs.

The Distt. Manager, Food Corporation of India,
Hissar. —Respondent.

REPRESENTATIVES :

For the workman : None.

For the management : Sh. Parmod Jain

AWARD

Dated : 18th June, 2002

The Central Govt. Ministry of Labour vide Notification No. L-22012/144/2000-IR (C-II) dated 5th February, 2001 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of FCI is terminating the services of Sh. Dalbir Singh S/o Sh. Amar Singh Ex. Security Guard w.e.f. August, 97 is just and legal ? If not, to what relief the workman is entitled ?"

2. None appeared on behalf of the workman. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution. Central Govt. be informed

Chandigarh.

Dated : 18-6-2002.

S. M. GOEL, Presiding Officer

नई दिल्ली, 8 जुलाई, 2002

का.आ. 2489.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 50/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2002 को प्राप्त हुआ था।

[सं. एल-22012/145/2000-आई.आर. (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 8th July, 2002

S.O. 2489.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 50/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 5-7-2002.

[No. L-22012/145/2000-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I. D. 50/2001

Sh. Harbhaj C/o Sh. Krishan Lal, Model Town, Bhattu
Mandi, Fatehabad. —Applicant

Vs.

The Distt. Manager, Food Corporation of India,
Hissar. —Respondent.

REPRESENTATIVES :

For the workman : None.

For the management : Sh. Parmod Jain

AWARD

The Central Govt. Ministry of Labour vide Notification No. L-22012/145/2000-IR (C.M-II) dated 13th December, 2000 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of FCI is terminating the services of Sh. Harbhaj Singh S/o Sh. Nakey Ram, Security Guard w.e.f. August, 97 is legal and justified ? If not, to what relief the workman is entitled ?”

2. None appeared on behalf of the workman. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution, Central Govt. be informed.

Chandigarh. S. M. GOEL, Presiding Officer

Dated : 18-6-2002.

नई दिल्ली, 8 जुलाई, 2002

का.आ. 2490.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002-आई.आर. (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 8th July, 2002

S.O. 2490.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal/Labour Court, Godavarikhani as shown in the annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 5-7-2002.

[No L-22025/1/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, GODAVARIKHANI

PRESENT :

Sri P. Gurunadha Rao, B.Sc., B.L., Chairman-cum-
Presiding Officer.

Monday, the 17th Day of June, 2002

Industrial Dispute No. 23 of 2002

BETWEEN

Md. Ahmed Ali, S/o Yakoob Ali, Aged 39 years, Ex-
Clerk Grade-I, C/o B. Amarendra Rao,
Advocate, Or. No. ST 2-317, Bus Stand Colony,
Godavarikhani, Dist : Karimnagar, (A.P.) Pin
Code No. 505209. —Claimant

AND

The General Manager, M/s. Singareni Collieries
Company Limited, Ramakrishnapur Division,
Ramakrishnapur, Dist. : Adilabad

—Respondent

This petition coming before me for final hearing in the presence of Sri B. Amarendra Rao, Advocate for the claimant and of Sri C. S. N. Reddy, Advocate for the respondent and having stood over for consideration till this date, the Court passed the following :—

AWARD

This is a reference by the Government of India. Facts of the case briefly are as follows :—

The reference is to decide whether the action of the General Manager, M/s. Singareni Collieries Company

Limited, Ramakrishnapur in dismissing Sh. Md. Ahmed Ali, Clerk, Grade-I RAL of SCCL from service on 21-10-1998 is legal and justified.

The claimant filed claim statement stating that he was appointed as Floating Badli Filler in the respondent company w.e.f. 4-11-1987. He was selected as Clerk, Grade-II in the year, 1988. He was posted at MVTC, Ramakrishnapur in October, 1990. Prior to his posting, one Srinivas, General Mazdoor used to look after clerical duties including pay sheet preparation and cash distribution. After his posting also, the said Srinivas continued to look after the said duty. The claimant was promoted as Clerk, Grade-I in the year, 1995. He was kept under loop line and assigned unconnected works namely supervising the trainees and taking works from them. On 8-7-1997, P. Narasimha Rao, Training Manager found that M. Srinivas prepared pay sheet for 51 candidates instead of 36 persons. On 17-7-1997, P. Narasimha Rao obtained statement from the claimant under threat. He was suspended on 29-7-1997. Charge-sheet was issued on 27-10-1997 alleging misappropriation/defalcation of an amount of Rs. 2,38,460/-. Domestic enquiry was conducted and he was dismissed from the service w.e.f. 21-10-1998.

2. The respondent filed counter stating that there was one clerk post in MVTC, Ramakrishnapur. It was vacant till the claimant was transferred to MVTC, Ramakrishnapur. One Srinivas, General Mazdoor was attending to the duties of the clerk prior to the claimant. The duties of the clerk were preparation of pay sheets, receiving and disbursing cash to the trainees, typing and submitting returns to the company and also record-keeping. The said Srinivas was assisting the clerk. As a clerk, the claimant was responsible for preparation of pay sheets and disbursement of training allowance to the trainees. On 8-7-1997, the Training Manager of MVTC, Ramakrishnapur found irregularities in preparation of pay sheets and the claimant made confession to the effect that he played fraud in preparing pay sheets and misappropriation of company amount. Domestic enquiry was conducted. The claimant participated in the enquiry. Five witnesses were examined on behalf of the management and 15 documents were marked as exhibits.

It is further stated that M. Srinivas was dismissed from the service w.e.f. 9-12-1998 after conducting departmental enquiry. The claimant had withdrawn the amounts on the basis of the pay sheets and disbursed the amount to the trainees. The claimant prepared pay sheets with fictitious names and forged signatures. The claimant also prepared pay sheets to the trainees who were already paid.

3. Ex. M-1 to Ex. M-17 are marked.

4. Heard both sides.

5. The point for consideration is whether the charge against the claimant is proved, if so, whether the punishment of dismissal of the claimant from the service is in proportion to the charge.

6. Ex. M-1 is charge-sheet. It is stated in the charge-sheet that the claimant prepared pay sheets and handled cash from 1990 to 1996. In the pay sheets, it was found that the signatures and thumb impressions were not there, not indicated as unpaid and not remitted cash except on two or three times. The names mentioned in the pay sheets of

basic training candidates found to be fictitious and also the names mentioned in the pay sheets found to be fictitious when compared with the relevant basic record. Further, it is found that there was repetition of names of some workmen already paid during earlier period. It is further stated that the claimant mis-appropriated/defalcated an amount of Rs. 2,38,460/- from 1990 to 1996.

7. Ex. M-3 is reply to the charge-sheet. The claimant stated that on 8-7-1997, M. Srinivas, General Mazdoor was found in drunken state. He was suspected of foul play in preparing pay sheets. Pay sheets were verified and it was found that some cash was unpaid. Though M. Srinivas was improperly entrusted with the pay sheet work, the claimant was made scapegoat. He was confined in a room and forcibly obtained a confession in writing. The charge-sheet is vague because the allegation that he prepared pay sheets and handled cash from 1990 to 1996 is not true. One Srinivas, General Mazdoor misappropriated an amount of Rs. 2,63,092 from 1990 to 1997.

8. Ex. M-6 is enquiry proceedings. Statement of Chandrasekhar, Presenting Officer was recorded. He stated that he was appointed as Presenting Officer. He appeared before the enquiry officer to present the case on behalf of the management.

The Presenting Officer was appointed on behalf of the respondent company for conducting the case on behalf of the respondent company, but not to give evidence. His evidence is of no use.

9. Statement of P. Narasimha Rao, MVTC Manager, Ramakrishnapur was recorded.

He stated that he was working as Training Manager in MVTC, Ramakrishnapur since 1992. The claimant worked as Clerk in MVTC and worked upto February, 1996. The claimant prepared basic training allowance pay sheets and refreshing training allowance pay sheets and other pay sheets. He used to withdraw cash and used to disburse cash. He used to take assistance of M. Srinivas, General Mazdoor. He further stated that after transfer of the claimant, the said Srinivas was entrusted with preparation of pay sheets and disbursement of cash.

He further stated that on 8-7-1997, he made surprise check about the payment made by M. Srinivas. He found that Srinivas prepared pay sheet for 51 candidates instead of 36. Srinivas confessed that the claimant and himself together prepared false pay sheets and shared the amounts. The pay sheets were not available in the office. Srinivas brought some pay sheets from his house.

He further stated that the claimant gave statement in writing.

He further stated that the internal audit verified the pay sheets from 1990 to 1997.

He was cross-examined. For Question No. 7, he answered that both the claimant and Srinivas worked as clerks.

10. T. Prabhakar, Assistant Accounts officer in Audit department was examined. He stated that from 1987 onwards M. Srinivas, General Mazdoor worked at MVTC and used to look after clerical duties including pay sheet preparation, cash disbursement etc., along with the claimant (from 1990 onwards).

He further stated that the claimant mis-appropriated an amount of Rs. 2,38,460/-.

He further stated that most of the pay sheets were not available at MVTC.

11. M. Srinivas, General Mazdoor was examined. He stated that he worked in MVTC from August, 1987 to September, 1997. He was discharging clerical duties. He used to prepare pay sheets and used to disburse cash. He further stated that the claimant was posted in MVTC in October, 1990 and from that date, the claimant and himself worked together.

He further stated that from 1990 onwards, they added fictitious names in the paysheets, withdrew cash and both shared the amounts.

He further stated that in refresh training allowance pay sheets also they added fictitious names and withdrew cash.

On 8-7-1997, he prepared pay sheet for 51 persons instead of 36 persons.

He further stated that he brought some pay sheets from his house and submitted in the office.

12. Ex. M-6 contains cash notes showing that the claimant received cash under his signature. Cash notes were marked as Ex. 7 in the enquiry.

They contained the signature of the Training Manager also.

Pay sheets for training allowance were marked as Ex-8 in the enquiry. They contained the signature of the Training Manager. The Training Manager used to address letters to the company for sanction of amounts towards training allowance every month. Those letters are there in Ex-8. In pursuance of these letters, cash was being received vide cash notes found in Ex-7 under the signature of the Training Manager and the claimant.

Pay sheets were marked in Ex-9 in the enquiry. They show that the amounts were paid by the Training Manager under his signature. All the pay sheets contained the signature of the Training Manager.

24 duplicate pay sheets were marked in Ex-10 in the enquiry. They also contained the signature of the Training Manager.

24 cash notes were marked as Ex-11 in the enquiry. They contained the signatures of the Training Manager and the claimant.

13. All the cash notes and all the pay sheets contained the signatures of the Training Manager as well as the claimant. Therefore, it shows that the Training Manager and the claimant colluded together and mis-appropriated an amount of Rs. 2,38,460/-.

14. Respondent filed written arguments. Along with the written arguments, the respondent filed office order dt. 20-8-99 showing that P. Narasimha Rao, Training Manager was suspended and issued charge-sheet with regard to the mis-appropriation of amounts for which charge-sheet was issued against the claimant. He was reinstated into service pending enquiry.

The proceedings dt. 7-12-99 shows that he was made responsible for defalcation of the amounts by the amounts

by the claimant and Srinivas. He submitted his explanation and it was considered unsatisfactory. Domestic enquiry was conducted against him. He was found guilty of the charges. But he was let-off with a penalty of censure.

Another office order dt. 29-12-99 shows that P. Narsaiah who worked as Incharge Training Manager from 18-9-91 to 9-10-92 was found responsible for the defalcation of amounts by the claimant and Srinivas. Domestic enquiry was conducted against him and he was given punishment of reversion to a lower stage reducing his pay by two increments with cumulative effect.

15. The documents, i.e., Pay sheets, Cash notes and duplicate pay sheets clearly show that the amount was mis-appropriated not only by the claimant, but also by the Training Managers P. Narasimha Rao and P. Narsaiah. Therefore, enquiry was conducted against both the Training Managers. P. Narsaiah was given punishment of reducing his pay by two increments with cumulative effect while the Training Manager P. Narasimha Rao was let-off with a penalty of censure.

The documentary evidence shows that the claimant was a party to the mis-appropriation of amounts along with the Training Managers. But there is no proof that the claimant mis-appropriated the entire amount of Rs. 2,38,460/-. The claimant, M. Srinivas, P. Narsaiah and P. Narasimha Rao were responsible for mis-appropriation of the amounts.

I, therefore, consider that the charge against the claimant is partly-proved.

With regard to the punishment of dismissal from the service, I consider that the same is not in proportion to the charge when compared with the punishments given to the two Training Managers.

P. Narsaiah, the Training Manager for the period 18-9-91 to 9-10-92 was given punishment of reduction of two increments whereas P. Narasimha Rao the Training Manager from 1990 to 1996 was given light punishment of censure. Therefore, I am of the view that the claimant ought not to have received the punishment of dismissal from the service. Since the Training Managers were also responsible for mis-appropriation of the amounts, the claimant ought to have received less punishment.

Hence, I answer the point accordingly.

In the result, the reference is answered partly in favour of the claimant. The charge against the claimant is partly-proved. There is no proof that the claimant mis-appropriated the entire amount of Rs. 2,38,460/-. The Training Managers were given minor punishments. Therefore, the punishment of dismissal from the service is not in proportion to the charge. The claimant shall be reinstated into service with (twenty five per cent) 25% back-wages with continuity of service. Withholding (Seventy five per cent) 75% of back-wages is sufficient punishment for the claimant. Increments shall be given to the claimant for the period he was not in service from the date of removal till the date of reinstatement.

Parties shall bear their own costs.

Typed to my Dictation, Corrected and pronounced by me in the Open Court on this, the 17th day of June, 2002.

P. GURUNADHA RAO, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Workman :— For Management :—
—Nil— —Nil—

EXHIBITS

For Workman :—

—Nil—

For Management :—

Ex. M-1 dt. 27-10-97	Charge-sheet.
Ex. M-2 dt. 4-11-97	Ack., to charge-sheet.
Ex. M-3 dt. 7-11-97	Explanation to charge-sheet.
Ex. M-4 dt. 28-1-98	Enquiry officer nomination letter (x-copy).
Ex. M-5 dt. 4-4-98	Enquiry notice.
Ex. M-6 dt. 10-4-98	Enquiry proceedings along-with material documents of domestic enquiry.
Ex. M-7 dt. 15-5-98	Enquiry report.
Ex. M-8 dt. 10-8-98	Second show-cause notice.
Ex. M-9 dt. 20-8-98	Ack., for second show-cause notice.
Ex. M-10 dt. 26-8-98	Application of petitioner.
Ex. M-11 dt. 31-8-98	Explanation to second show-cause notice.
Ex. M-12 dt. 16-10-98	Dismissal order.
Ex. M-13 dt. 21-10-98	Ack., of dismissal order.
Ex. M-14 dt. 13-12-98	Copy of order in W. P. No. 36273 of 1998 of High Court of A. P.
Ex. M-15 dt. 11-1-99	Appreal copy of petitioner.
Ex. M-16 dt. 12-3-99	Letter issued to petitioner by Chairman & Managing Director, SCCL.
Ex. M-17 dt. 5-12-98	Dismissal order copy of Sri M. Srinivas, General Mazdoor, Area Hospital, Ramakrishnapur.

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2491.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असनसोल के पंचाट (संदर्भ संख्या 158/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[मं. एल-22012/233/99-आई. आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 16th July, 2002

S.O. 2491.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 158/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 15-7-2002.

[No. L-22012/233/99-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Ramjee Pandey, Presiding Officer.

REFERENCE NO. 158 OF 1999.

PARTIES:

Agent, J. K. Nagar Colliery —Management
Irs

Sh. Paswan, U. G. Loader —Workman

REPRESENTATION:

For the Management —None

For the Workman (Union) —None

Industry : Coal State : West Bengal

Dated the 17th June, 2002

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, Govt. of India through the Ministry of Labour by its order No. L-22012/233/99/IR(CM-II) dated 08/09-9-99 has referred the following dispute for adjudication by this Tribunal.

“Whether the action of the management of J. K. Nagar Colliery, P.O. Bidhanbag in not allowing the pay protection at the time of conversion of post from Piece Rated to Time Rated in respect of Sh. Paswan, Under-ground Loader is justified? If not, to what relief the workman is entitled?”

After receiving the reference summons were sent to the parties by registered post. In response to the summons Shri P. K. Das, Advocate for the management and Shri R. K. Tripathi, Chief Organising Secretary of the Union appeared with petition for time for filing written statement. Despite repeated adjournments none of the parties filed their respective written statement and lastly they failed to appear and attend the court. The conduct of both the parties indicates that they have no interest to contest the dispute, from which natural inference is that the dispute does not exist. Hence a ‘No Dispute Award’ is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 17 जुलाई, 2002

का.आ. 2492.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 156/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2002 को प्राप्त हुआ था।

[सं. एल-22012/19/95-आई. आर. (सी-II)]
एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 17th July, 2002

S.O. 2492.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 156/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 16-7-2002.

[No. L-22012/19/95-IR (C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR PRESENT
SHRI B. G. SAXENA, PRESIDING OFFICER

REFERENCE NO. CGIT : 156/2000

The Sub Area Manager, W.C.L.

AND

Shri Vithal Shrawan Motghare

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/19/95/IR(C-II) dt. 16-5-95 on following schedule.

SCHEDULE

“Whether the action of the management of Sub Area Manager, Western Coalfields Ltd., Rajur Colliery Sub Area District Yeotmal in terminating the services of Sh. Vithal Shrawan Motghare, Badli Worker w.e.f. 4-8-93 is justified or not? If not to what relief the workman is entitled to?”

Vithal Shrawan Motghare had submitted Statement of Claim in CGIT Court No.-I at Mumbai on 7-5-95.

The above reference was received by transfer in CGIT Court, Nagpur in June, 2000.

The workman Vithal Shrawan Motghare in his Statement of claim stated that he was working in Rajur Colliery of WCL as Badli Worker. He was sick and was attacked by disease alongwith light mental effect from February, 1992. His elder brother met the Sub Area Manager

and explained him about his illness. He sent the Medical Certificates in the year 1992 & 1993. His elder brother read in the newspaper, Nav Bharat that departmental enquiry has started against him and the date for hearing is 30-5-93. The departmental enquiry proceeded ex parte and his service was terminated w.e.f. 4-8-93. The workman claimed reinstatement with backwages from 4-8-93.

The management of WCL in Written Statement which was received in this Court on 18-6-96 mentioned that Vithal S. Motghare was appointed as Badli Worker on 27-8-90. He was in the habit of remaining absent. During 1991 he worked for 145 days. From Feb. 1992 he did not turn up on duty and no Leave Application or Medical Certificate was submitted by him regarding his illness.

The management then started enquiry against him and S. N. Gohokar was appointed Enquiry Officer vide letter No. 830 dt. 30-3-93. As the workman had not given any address as to where he was living, the chargesheet was published in Nav Bharat Daily Newspaper on 19-5-93. The workman sent his reply on 25-5-93 stating that he is not fit to resume the duty. On 30-5-93 the enquiry proceedings were recorded. As the workman did not turn up to attend the enquiry, the enquiry proceeded ex parte.

After recording the evidence the Enquiry Officer submitted his report. The competent authority terminated the services of the workman from 4-8-93.

Both the parties produced evidence in this Tribunal. The oral and documentary evidence produced by the parties was considered. The arguments submitted by the advocate of the workman and the advocate of WCL were also considered.

The workman Vithal S. Motghare had submitted his affidavit in CGIT Court No.-I of Mumbai on 10-7-96. He was cross-examined on 5-3-97. The workman stated in cross-examination that he does not know the name of the union representative through whom he got the reply of the chargesheet drafted. He himself did not go to the office of colliery to submit the reply of the chargesheet. The chargesheet is dated 18-2-93 showing his regular absence from duty from Feb. 92. The workman stated that he had submitted reply Ex-W1/1 and Ex-W1/2 of the chargesheet to Bilash Babu, Clerk. He had not mentioned any date on these letters. He also does not know as to when he sent the first letter. He does not know after how much gap of time he sent the another letter. He says that on 30-5-93 he had also met with the Enquiry Officer. Thus the claim of the workman that enquiry proceeded ex parte and he was not aware of enquiry proceedings, is baseless. Another affidavit of Maroti Shrawan Motghare was filed on 17-3-93. He says that he had moved application to the management for getting a few days more for conducting the enquiry. This witness did not turn up for cross-examination.

Vithal S. Motghare filed another affidavit on 3-1-02 and he was again cross-examined on 11-3-02 by the counsel for management. In cross-examination he says that his brother Maroti Shrawan Motghare had told him that he had been dismissed from service. He further says that he did not file any appeal against dismissal. He says that the punishment awarded to him is harsh.

As I discussed above the Medical Certificate W1 is not the original certificate. Even the name of the doctor is

not disclosed. The date of issuing of this certificate is also not mentioned. Another Medical Certificate dt. 15-2-92 is from 15-2-92 to 30-4-92. The third certificate is from 1-5-92 to 31-7-92. Another certificate from 1-8-92 to 31-12-92. The last Medical Certificate is from 1-1-93 to 31-5-93. After that the certificate dt. 18-6-93 is from 1-6-93 to 19-6-93. These certificates show that the workman was fit to join duty on 20-6-93. The workman himself does not say as to when he obtained these Medical Certificates. He also does not say on which date these certificates were sent to management and who submitted these certificates to Sub Area Manager.

Even in Statement of Claim he did not mention any disease from which he was suffering. He has only mentioned that he was sick and was attacked by the disease alongwith light mental effect. None of these certificates shows that the workman was suffering from any mental disease or he was taking any treatment for any mental disease.

S. N. Gohokar, the Enquiry Officer stated that on 19-5-93 in Nav Bharat Newspaper it was published that the enquiry will be started against the workman. The workman did not appear before him. He had sent the reply of chargesheet on 25-5-93. The workman did not convey any information regarding his illness during enquiry. No Medical certificate was submitted by the workman or by his brother Maroti Shrawan Motghare during the enquiry.

In these circumstances discussed above, it is evident that the workman remained absent from duty from February, 1992 continuously till the enquiry was concluded by the Enquiry Officer. Even at the time of his termination he did not submit any satisfactory evidence regarding his long illness. The management had therefore given sufficient opportunity to the workman to explain his unauthorised absence. The action of the management in terminating the service of the workman Vithal Shrawan Motghare w.e.f. 4-8-93 is therefore justified.

ORDER

The action of the management of Sub Area Manager of WCL, Rajur Colliery Sub Area, Distt. Yeotmal in terminating the services of Shri Vithal Shrawan Motghare w.e.f. 4-8-93 is justified.

The workman is not entitled to any relief claimed by him.

Date : 4-6-02

B. G. SAXENA, Presiding Officer

नई दिल्ली, 17 जुलाई, 2002

का.आ. 2493.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 279/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2002 को प्राप्त हुआ था।

[सं. एल-22012/45/2000-आई. आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 17th July, 2002

S.O. 2493.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 279/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 16-7-2002.

[No. L-22012/45/2000-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR
PRESENT SHRI B. G. SAXENA,
PRESIDING OFFICER

REFERENCE NO. CGIT : 279/2000

The Chief General Manager, W.C.L.

AND

Shri Subhash Shivcharan

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/45/2000/IR(CM-II) dt. 18/19-9-2000 on following schedule.

SCHEDULE

“Whether the action of the management of the Agent/Sub Area Manager, Thisgora Mathani Sub Area of WCL, PO : Parasia, Distt. Chhindwara (MP) in terminating the services of Shri Subhash S/o Shivcharan, General Mazdoor, T. No. 251 of Thisgora Underground Mine of WCL, Pench Area is justified ? If not to what relief the workman is entitled to ?”

This reference was received in July, 2000. The workman Subhash Shivcharan was directed to submit his Statement of Claim. The workman had submitted Statement of Claim on 27-3-01. The management submitted written Statement on 27-7-01. The workman also filed Rejoinder Through advocate Shri C. L. Jaiswal on 5-9-01. The workman admitted in Rejoinder that the chargesheet dt. 11-9-98 was issued to him and the enquiry had started against him. He could not attend enquiry due to his sickness and was terminated from the service.

Today the case was called out. Neither the workman turned up nor his union representative appeared to contest the case.

Shri A. K. Sashi, the counsel for the management is present. He argued the case for the management.

After 5-9-01 the workman did not file any affidavit in support of his Statement of Claim.

On 10-12-2001 the workman was absent. Again on 30-01-02 the workman did not submit any affidavit and the case was adjourned to 20-3-02, 3-5-02 and 10-6-02. The workman has not submitted any affidavit or any document regarding his illness. Today the case was taken up but the counsel for the workman did not turn up to conduct the case.

The chargesheet dated 11-9-96 shows that the workman remained absent from 17-2-98 to 11-9-98. The details of absences of the workman during the year 1997 and 1998 are also mentioned in the enquiry proceeding.

In 1997 the workman worked only for 91 days during the 12 months. Again in 1998 the workman worked for 61 days. He did not work for a single day in the month of July, 98, August, 98, September, 98, November, 98, and December, 98. He worked for 2 days only in October, 98. In view of the above facts, the charges against the workman have been established.

The counsel for the workman submitted only one document i.e. certificate dt. 19-12-98. This is the Fitness Certificate. It only shows that the workman was fit to join duty on 19-12-98. No other document regarding the illness of the workman has been submitted.

In view of the above facts and evidence, the order of the management for terminating the services of Subhash Shivcharan is justified.

ORDER

The action of the Sub Area Manager, Thisgora Mathani Sub Area of WCL, PO : Parasia, Distt. Chhindwara (MP) in terminating the services of Shri Subhash S/o Shivcharan, General Mazdoor, T. No. 251 of Thisgora Underground Mine of WCL, Pench Area is justified.

The workman is not entitled to any relief claimed by him.

Date :

B. G. SAXENA, Presiding Officer

नई दिल्ली, 17 जुलाई, 2002

का.आ. 2494.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 52/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2002 को प्राप्त हुआ था।

[सं. एल-22012/163/2000-आई. आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 17th July, 2002

S.O. 2494.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which

was received by the Central Government on 16-7-2002.

[No. L-22012/163/2000-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT SHRI B. G. SAXENA,

PRESIDING OFFICER

REFERENCE NO. CGIT : 52/2001

The Sub Area Manager, W.C.L.

AND

Shri Nilkanth Punjaram Mahore

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/163/2000-IR (C-II) dt. 25-1-2001 on following schedule.

SCHEDULE

"Whether the action of the management of the Sub Area of WCL, Saoner Distt. Nagpur (MS) in dismissing Shri Nilkanth Punjaram Mahore, Cableman, Mine No: 1 from services w.e.f. 22-5-1999 is legal and justified? If not, to what relief the workman is entitled to and from which date?"

This reference was received in the month of September, 2001. Notices were issued to both the parties for 8-10-01. Both the parties absented on 8-10-01 & 5-12-01 and the case was adjourned to 31-01-02. On 31-01-02 the workman Nilkanth P. Mahore appeared and took time to submit Statement of Claim. The workman represented that he wants time to engage counsel for submitting Statement of Claim and the case was adjourned to 22-2-02. On 22-02-02, Panjabrao S. Lambat, Advocate filed Vakalatnama for workman but he did not submit any Statement of Claim. The case was adjourned to 2-4-02. On this date the advocate of the workman moved application that he could not prepare the Statement of Claim as the workman is suffering from fever. The case was adjourned to 24-4-02. On this date both the parties were absent. The case was again adjourned to 12-6-02 for filing Statement of Claim.

On 12-6-02 neither the workman turned up nor his counsel submitted any Statement of Claim. The union representative of the workman also did not appear to conduct the case. The management representative also did not turn up to represent the management.

It is therefore clear that the workman Nilkanth P. Mahore was given sufficient time to submit Statement of Claim but neither the workman submitted any Statement of Claim nor his counsel P. S. Lambat filed any Statement of Claim. In the above circumstances the reference is disposed of for want of prosecution.

ORDER

The workman Nilkanth Punjaram Mahore did not submit any Statement of Claim in this Court though sufficient time was given to him and case was adjourned several times. The reference is therefore disposed of for want of prosecution.

B.G. SAXENA, Presiding Officer

नई दिल्ली, 17 जुलाई, 2002

का.आ. 2495.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 121/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2002 को प्राप्त हुआ था।

[सं. एल-22012/218/98-आई.आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 17th July, 2002

S.O. 2495.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 121/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 16-07-2002.

[No. L-22012/218/98-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT SHRI B. G. SAXENA, PRESIDING OFFICER

REFERENCE NO. CGIT : 121/2000

THE SUB AREA MANAGER, W.C.L.

AND

SHRI GAJANAN VINAYAK MUDE

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub Section (1) and Sub Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/218/98/IR (CM-II) dt. 28-04-99 on following schedule

SCHEDULE

"Whether the action of the management of namely Sub Area Manager, Durgapur Rayatwari Colliery of WCL PO & Distt. Chandrapur in terminating the workman namely Sh. Gajanan Vinayak Mude, Loader, w.c.f. 23-12-96 from service is proper legal and justified? If not, to what relief is the workman entitled?"

In this reference Gajanan Vinayak Mude, Ex. Badli Piece Rated Workman of Rayatwari Colliery had filed Statement of Claim on 23-08-99 in the Court of CGIT Court No.-II, Mumbai. This case was received by transfer in this Tribunal in June, 2000.

The workman stated that he was employed in 1990. His attendance was less than 190 days in each year from

23.02.90/02-13

1990-96, so he was not regularised as permanent workman. He was dismissed from service due to being absent from 06-01-96 to 27-03-96. The enquiry was conducted against him and dismissal order was passed on 23-12-96. The workman claimed that he was not a regular worker. To allot work was the sweet will of the management. No showcause notice was issued to him, hence his termination is illegal and the order of dismissal be quashed.

The workman submitted his affidavit on 11-02-2000. He did not turn up for cross examination upto 14-03-2000 though number of dates were given to him. His evidence was therefore closed. The management also did not produce any oral evidence in this case.

Shri B. N. Prasad, the counsel for the management argued that the management relies on the documentary evidence, so no oral evidence has been produced.

On 14-02-01 the workman absented and his counsel also did not turn up. After that 03-04-01, 18-04-01, 7-6-01 were fixed. Again on 07-06-01, both the parties absented and case was adjourned to 04-07-01. The workman did not turn up for cross examination. Again on 13-08-01, 04-09-01, 05-10-01 were fixed for cross examination of workman but the workman absented. Both the parties again absented on 05-10-01 & 05-12-01. On 28-01-02 the workman did not turn up and case was fixed for evidence of management. On 14-03-02 also the workman did not turn up for cross examination and the evidence of workman was closed. On 16-05-02 nobody appeared from the side of workman to conduct the case. The advocate of the management represented that the management does not want to produce any oral evidence and closed the evidence of management.

07-06-02 was fixed for argument. Nobody appeared from the side of the workman to argue the case on this date. Counsel for the management submitted Written Arguments and argued the case orally. It is argued by the counsel for the management that the workman was regularly absent from 06-01-96 to 27-03-96, the date of issuing the chargesheet.

On 13-04-96 the workman had moved application to the Manager of the Colliery that due to some problems in his family he had absented from 06-01-96. He will not commit such mistake again. During enquiry on 20-04-96 the workman admitted his guilt. He stated that he confesses that he was absent without satisfactory explanation. He therefore accepts the charges framed against him. The Enquiry Officer closed the enquiry with the consent of both the parties. On 13-11-96 the Deputy CME/Manager, Durgapur Rayatwari Colliery passed the order that the charges have been proved against the workman and he may submit his explanation within three days as to why he should not be dismissed. On 23-12-96 the Deputy CME passed the order that the workman was in the habit of remaining absent. The charge has been proved against him and he is therefore dismissed from service w.c.f. 23-12-96.

The counsel for management argued that on 13-04-96 the workman had submitted his explanation that due to loss of mental balance he could not attend his duty. He also stated that he could not inform the management

about his absence and could not get his leave sanctioned. The letter dt. 05-10-94 shows that the workman was warned for remaining absent unauthorisedly. On 29-10-94 again warning was issued to him. On 02-11-94, 15-04-95, 06-06-95 and 04-09-95 the workman was given warning for his being absent from duty. These documents are Annex-H.

In the above circumstances the workman has not produced any evidence to show that his termination was illegal.

In this Court also the workman did not turn up for cross examination though several dates were given to him. His counsel also did not prefer to argue the case for the workman.

In view of the above facts and evidence, the action of the management namely Sub Area Manager, Durgapur Rayatwari Colliery in terminating the service of Gajanan Vinayak Mude, Loader w.e.f. 23-12-96 is proper, legal and justified.

ORDER

The action of the management namely Sub Area Manager, Durgapur Rayatwari Colliery of WCL, PO & Distt. Chandrapur in terminating the service of the workman namely Gajanan Vinayak Mude w.e.f. 23-12-96 is legal, proper and justified.

The workman is not entitled to any relief claimed by him.

Dated : 07-06-2002 B. G. SAXENA, Presiding Officer

नई दिल्ली, 17 जुलाई, 2002

क्रा.आ. 2496.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 219/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2002 को प्राप्त हुआ था।

[सं. एल-22012/590/99-आई.आर. (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 17th July, 2002

S.O. 2496.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 219/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 16-07-2002.

[No. L-22012/590/99-IR (C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT SHRI B. G. SAXENA, PRESIDING OFFICER

REFERENCE NO. CGIT : 219/2000

THE GENERAL MANAGER, W.C.L.

AND

SHRI AJINDER SOHI

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of Sub Section (1) and Sub Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute for adjudication vide order No. L-22012/590/99/IR (CM-II) dt. 06-07-2000 on following schedule.

SCHEDULE

“Whether the action of the management of WCL, Kanhan Area, PO : Dungaria, Distt. Chhindwara (MP) in dismissing the services of Sh. Ajinder Sohi, General Mazdoor of Tandshi Project of WCL, Kanhan Area w.e.f. 05-12-95 is legal and justified / If not, to what relief the workman is entitled ?”

The workman Ajinder Sohi has submitted Statement of Claim on 30-11-2000. He has mentioned in the Statement of Claim that he was appointed on 24-07-94 on compassionate ground after the death of his father, as General Mazdoor under Tandshi Project of Kanhan Area. He was about 21 years old.

On 25-01-95 he fell ill and submitted Medical Certificate of his illness upto 05-03-95. He went to join duty on 06-03-95 but he was not allowed to join duty. He came back and again submitted Medical Certificate extending his leave. On 16-10-95 he was told by Mustafa Khan, Enquiry Officer that enquiry is being conducted against him and on same day i.e. 16-10-95 he completed the enquiry. He was dismissed from service w.e.f. 05-12-95. He says that the order of dismissal has been passed illegally and arbitrarily. The enquiry was not conducted according to the principles of natural justice. The workman claimed reinstatement with full backwages.

The management of WCL contested the case and mentioned in Written Statement that workman, Ajinder Sohi was absent from 25-01-95 to 01-07-95. On 01-07-95 the charge-sheet was prepared and sent to him by post which was returned unserved. On 19-05-95 the Enquiry Officer, Mustafa Khan was appointed and 06-10-95 was fixed. On 16-10-95 the workman was served with charge-sheet. The Enquiry Officer recorded the evidence. The Medical Certificates submitted by the workman were perused by him. He completed the enquiry on same day i.e. on 16-10-95. The workman was dismissed from service from 05-12-95 on the report of the Enquiry Officer.

In this Tribunal the management submitted affidavit of V. K. Shrivastav, Personal Manager and Mustafa Khan, Enquiry Officer.

Ajinder Sohi also submitted his affidavit through his counsel G. G. Mishra.

Both the parties have been represented by their advocates and have submitted documents and written arguments.

I have considered entire oral and documentary evidence on record.

The counsel for the workman has argued that enquiry was not conducted fairly and impartially. The workman was asked to sign some documents on the assurance of the Enquiry Officer that enquiry is a formality and he would be allowed to join duty. The workman was of 21 years old and was not aware with the procedure and technicalities of the enquiry proceedings.

V. K. Shrivastav, Personal Manager was cross examined on 04-03-02. In his cross examination he stated that the workman can take treatment from a private doctor also according to his choice. On 05-12-95 the workman Ajinder Sohi was dismissed from service. He does not know whether any notice was given to the workman by the management before passing the dismissal order. He also does not know whether workman was provided any opportunity of hearing before the final order of dismissal from service.

Mustafa Khan, Enquiry Officer also stated in his cross examination on 04-03-02 that he did not furnish the copies of the documents to the workman on which the enquiry was based, during the enquiry proceedings. He also does not say that any other person of the management had handed over the copies of the documents of the management to the workman. He did not disclose the name of that person who gave the copies of the documents to the workman. He further says that before the enquiry proceedings, the workman had not received the charge-sheet. He had read over this charge-sheet to the workman. Thus the statement of Mustafa Khan does not show that he had given the copy of the chargesheet to the workman on 16-10-95. He also does not say that anybody had given the copies of documents of the management to the workman in his presence. Thus the evidence of the Enquiry Officer does not show that the workman was provided with the documents mentioned in the enquiry report.

The workman Ajinder Sohi says that he could not read the enquiry proceedings Ex-M4. He only signed them. It is therefore clear that the Enquiry Officer did not provide sufficient opportunity to the workman to go through the enquiry proceedings. He also says that he had submitted his Medical Certificates of his illness on 16-10-95. The copy of enquiry report was also not given to him by the Enquiry Officer.

The perusal of the enquiry report shows that the enquiry report of Mustafa Khan does not bear any date. The counsel for the management also admitted that the enquiry report does not bear any date. In the affidavit dt. 25-08-01, the Enquiry Officer has mentioned as under :

"I have submitted my enquiry report which is Ex-M5, Page-19 & 20 holding that the charges stand proved against the workman."

In this affidavit Mustafa Khan did not mention anywhere as to when he wrote the enquiry report and when he submitted the enquiry report. The perusal of the enquiry report shows that Shri Mustafa Khan has mentioned in last line of his report that he finds the workman guilty for his being unauthorisedly absent from

25-01-95 to 16-10-95 without any leave application or reasonable cause.

The charge-sheet shows that the charge was levelled against the workman for his absence from duty from 25-01-95 till this date. The charge-sheet is dt. 01-07-95. So the charge against the workman was for being absent from 25-01-95 to 01-07-95, as mentioned in Ex-M1 but the Enquiry Officer went beyond it and has held the workman guilty of being absent from 25-01-95 to 16-10-95. If the workman was not facing the enquiry for his absence upto 16-10-95, it is not explained as to how and when he recorded his findings of absence of workman from duty from 25-01-95 to 16-10-95. On the other hand there is document page-9 on which it is mentioned that the workman remained absent from 25-01-95 to 30-09-95 as per form 'C' and he is absent on 16-10-95 also.

If the workman was absent on 16-10-95, it is not explained by the Enquiry Officer as to how he recorded the statement of the workman on 16-10-95 and completed the enquiry against him. If the workman was absent on 16-10-95 then the entire proceedings of enquiry became farce. It is also not explained by the Enquiry Officer as to how he obtained the signature of Ajinder Sohi on 16-10-95 if he was absent.

There is nothing on record to show that the workman was allowed to join his duty by the management anytime before 16-10-95 or on 16-10-95 i.e. the day of enquiry.

The Enquiry Officer has also not given any reason as to why he discarded the medical evidence regarding the illness of the workman. The Enquiry Officer has mentioned that the workman had given him the Medical Certificates of his illness from 25-01-95 to 11-09-95. He had not mentioned any reason for disbelieving these Medical Certificates. The Medical Certificate dt. 10-02-95 and the applications of the workman dt. 04-03-95 and 22-05-95 and 13-09-95 and the Medical Certificate dt. 11-09-95 are on the record of enquiry proceedings.

On 04-03-95 the workman moved application to join his duty and stated that he shall not repeat the practice of being absent or irregularity. It shows that on 04-03-95 the workman was recovered and he wanted to join the duty from 06-03-95.

The application dt. 22-05-95 also shows that the workman had requested that he may be allowed to resume his duty from 22-05-95.

On 13-09-95 also the workman mentioned in the application that he desires to resume his duty. Thus the above documents show that the workman approached the management several times that he may be allowed to join the duty but he was not allowed to join the duty. In the enquiry proceedings on 16-10-95, the workman had told the Enquiry Officer that on 06-03-95 he had requested the management to allow him to join duty but he was reboked by the Manager and he asked him to go back.

In these above circumstances it can not be believed that the workman was not willing to do work from 06-03-95.

The counsel for the management has argued that the workman had not brought the Medical Certificates from the Colliery doctors, so the Medical Certificates of

private doctors were not accepted by the Enquiry Officer. The Enquiry Officer had not mentioned this reason in his enquiry report for discarding the Medical Certificates of private doctors. Even the witness of management Shri V. K. Shrivastav has mentioned in cross examination that a workman can get his treatment from any private doctor. Thus the argument of the counsel for the management is baseless.

There is nothing on record to show that the copy of the enquiry report was given to the workman by the management before passing the order of dismissal. The Enquiry Officer has himself not mentioned any date on his enquiry report. The date of submission of enquiry report by the Enquiry Officer is also not mentioned by the Enquiry Officer in his affidavit dt. 25-08-01.

The Workman was also not given any opportunity of hearing by the Superintendent (M)/Manager, Tandsi Project before passing the order of dismissal of workman Ajinder Sohi. Thus the opportunity of hearing was not provided to the workman by the management before the order of dismissal. In these circumstances discussed above, the enquiry can not be considered fair and impartial. The Enquiry Officer's report is self contradictory for holding the workman guilty of the charge of being absent from 25-01-95 to 16-10-95, whereas the charge against the workman was for being absent from 25-01-95 to 01-07-95.

The findings of the Enquiry Officer are therefore perverse.

In the above circumstances and the evidence, the action of the management of WCL in dismissing the service of Ajinder Sohi, General Mazdoor w.e.f. 05-12-95 is illegal and unjustified. The workman therefore deserves reinstatement.

The workman had joined service from 24-07-94 and worked upto 25-01-95. In these above circumstances he is allowed only 10% of his backwages.

ORDER

The action of the management of WCL, Kanhan Area, PO. Dungaria, Distt. Chhindwara (M.P) in dismissing the services of Ajinder Sohi, General Mazdoor of Tandsi Project of WCL, Kanhan Area w.e.f. 05-12-95 is illegal and unjustified.

The workman is reinstated in service as General Mazdoor w.e.f. 05-12-95. He is granted 10% of backwages only.

The reference is answered accordingly.

Dated : 06-06-2002 B. G. SAXENA, Presiding Officer

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2497.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे, झांसी के प्रथम तंत्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - कम-लेबर कोर्ट, लखनऊ के पंचाट (संदर्भ संख्या आई. डी. 46/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-41012/244/2000-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2002

S.O. 2497.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I.D. 46/2001) of the Central Government Industrial Tribunal Labour Court, Lucknow as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Jhansi and their workman, which was received by the Central Government on 15-07-2002.

[No. L-41012/244/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR

PRESIDING OFFICER

I.D. No. 46/2001

Ref. No. L-41012/244/2000/IR(B-I) dated 19-3-2001

Between

Siraj Khan S/o Fazal Rehman R/121, C.P. Mission
Compound Masjid, Civil Lines, Jhansi-284002

And

The Divisional Commercial Manager (Catering) Central
Railway, Jhansi-284001

AWARD

By order No. L-41012/244/2000/IR (B-I) dated 19-3-2001, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and Section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Siraj Khan S/o Fazal Rehman C.P. Mission Compound Masjid, Civil Lines, Jhansi and the Divisional Commercial Manager (Catering), Central Railway, Jhansi for adjudication

The reference under adjudication is as under :

Whether the action of the Management of Divisional Commercial Manager (Catering) in terminating the services of Siraj Khan S/o Fazal Rehman under Section 25F of the I.D. Act, 1947 w.e.f. 30-9-1994 is justified? If not, what relief the workman is entitled?

2. Admitted case of the parties is, that Siraj Khan, the workman, was engaged in Catering Unit, Jhansi, Central Railway as Cleaner on 10-7-88. Initially, he was appointed as a daily wager, alongwith 13 others casual labours, all appointed to discharge multifarious duties of cleaner/bearers and other allied works. These works had increased due to supply of food packages etc. in the Shatabdi Express. The workman along with others continuously worked for more than six years and acquired temporary status. The workman on acquiring temporary status was appointed Monthly Rated Casual Labour (MRCL) w.e.f. 30-12-89. He continued to work for about five years as MRCL, when abruptly on 30-9-94, his services were

terminated with a notice under Section 25 F of the I.D. Act. By the said notice the management instead of waiting for a month, paid salary and retrenchment compensation quantified Rs. 6216 only

3 The workman, initially challenged his termination at Central Administrative Tribunal, but did not find response due to lack of jurisdiction. This dispute was taken to the High Court in a Writ Petition but the merit of the dispute was not considered, as status of the workman and legality of his termination were to be determined on the basis of evidence and so, workman was desired to raise industrial dispute. Accordingly, this industrial dispute was raised before the Asstt. Labour Commissioner (C) and on failure of conciliation, the Central Government in exercise of its powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of the I.D. act, 1947, referred the dispute for adjudication to this tribunal

4 As observed in foregoing para. the management admitted engagement of the workman and also grant of temporary status as MRCL w.e.f. 30-12-89 on him. However, it is pleaded that Railway Board imposed complete ban on the engagement of fresh casual labour after the year 1980, without prior personal approval of the General Manager of the Zonal Railways. The workman together with 13 other casual labours were engaged by the competent authority, without prior personal approval of the General Manager and so it is contended that engagements were void ab initio, being against the rule and instructions of the Railway Board. Alternative, it is also stated that on process of streamlining man power under the MAN POWER PLANNING, the workman and twenty others were found surplus being in excess of requirement and so, were retrenched with legal compensation etc. under the provision of Section 25-F of the I.D. Act, 1947. The benefits envisaged under the said section were paid to the workman and others and their retrenchment can not be questioned. It is further pleaded that since 1994, the work of Catering Unit at Jhansi is running with efficiently and without disruption which demonstrate surplusage of the workman and other retrenched workmen

5 The reference order requires judicial scrutiny of retrenchment dated 30-9-94 purported to have been made under Section 25-F of the I.D. Act, on the basis of facts recited by the parties. The termination is mainly challenged on grounds, viz:

- (i) Malicious action under Section 25-F of the I.D. Act, 1947 using the said provision as camouflage,
- (ii) Non compliance of Section 25-N; and
- (iii) On acquiring temporary status, the workman derived status of temporary servant and was governed by the Railway Servants (Disciplinary & Appeal) Rules, and his termination without adhering to the said rules and principle of natural justice being illegal

6 Both the parties have filed oral and documentary evidence to substantiate their respective versions. The workman filed list of employees at Catering Unit Jhansi for the year 1994 showing 142 employees at work in the said year to substantiate that Catering Unit Jhansi was an

'Industrial Undertaking' under Section 25-K and he was entitled to protection and benefit under Section 25-N. A copy of letter No. C/102/CL/II-DC dated 28-12-92 is filed to show temporary status accorded to him and 20 other casual labours. Temporary status was granted to the workman w.e.f. 30-12-89. This letter further mentions approval of the Sr. Divisional Commercial Manager, Jhansi, in granting of temporary status. Copy of notice under Section 25-F of the I.D. Act, 1947 terminating his services is also filed. Medical certificate is also filed to show his health fully conforming to requirement of services in catering unit. The workman has also filed a copy of letter of the Chief Catering Inspector dated 12/14-7-94, in respect to proposal discharging of 21 Monthly Rated Casual Labours including him. In addition, the workman relied on his own affidavit. He was cross-examined by the management

7. The management has also filed a copy of a chart indicating total strength (designation-wise) of the catering unit, Jhansi including Shatabdi Express, a copy of the FA & CAO letter dated 2-7-93, a copy of CPO(HQ) letter dated 19-8-93, a copy of letter dated 8-7-94 of the Sr. Divl. Accounts Officer/Central Railway, Jhansi, a copy of official notice dated 28-9-94 regarding disengagement of the services of workman and others, a copy of letter dated 28-9-94 by DRM regarding his disengagement and of others. The management of the Central Railway also examined Mr. Y.K. Tripathi, Divisional Commercial Manager (Catering) who was cross examined on behalf of the workman

8. Adverting to first submission that Section 25-F was applied maliciously and this provision was used as camouflage, the facts of appointment acquiring of temporary status and termination with notice under Section 25-F required to be analysed. The workman and others were engaged in Catering Unit of Jhansi to strengthen working of the said unit. No separate establishment or unit was formed to cater requirements of the Shatabdi Express. The letter of the Chief Catering Inspectors mentions that newly appointed casual worker/cleaners, were retained in the unit and instead 14 of the senior were assigned work for Shatabdi Express. This fact remains uncontroversed. This further corroborate plea of the workman that he and others were the employees of the catering unit Jhansi and not of any separate unit in the name of Shatabdi Express unit, as pleaded by the management. In fact, the base kitchen was common. The workman and others were engaged on selection due to increased load of work. Their engagement were made by the competent authority. The management has not disputed legality of the appointment, grant of and temporary status to them except stating non obtaining of approval of the General Manager. Also retrenchment is justified on plea of surplusage of staff.

9. In the notice of retrenchment dated 30-9-94, it is specifically mentioned

“आपकी सेवाओं की आवश्यकता नहीं होने के कारण आपकी सेवाओं को एतद्वारा तत्काल प्रभाव से समाप्त की जाती है
.....”

10. Natural meaning of the above expression is that there were surplus staff and the services of the workman

and others were not needed. It is stated in para 5 of the written statement, "that however, subsequently due to shrinkage of work after streamlining of man power planning, it was seen that services of these casual labours including claimant were no more required as there are already excess casual labours." To substantiate the above statement, the management has annexed a chart indicating total strength (designation-wise) at Catering Unit, Jhansi including Shatabdi Express. This chart has been classified in two parts, first part showing present total strength and the second part showing total strength at the time of retrenchment i.e. on 30-9-94. A glance over this chart, indicate present total strength 98, including 44 bearers and 18 cleaners. On the date of retrenchment i.e. 30-9-94, the strength at Catering Unit, Jhansi was 63 including 24 bearers and 10 cleaners. This chart falsifies statement in para 5 of the written statement. The strength since increased by $(98 - 63) = 35$ at present. The number of bearers and cleaners also increased. The shrinkage of staff on man power planning, is, obviously an after thought and false, particularly, when the present strength increased by more than 33% i.e. by 35, in comparison to year of the retrenchment. Even if the retrenched staff (21) is included, the total $(63 + 21) = 84$ is less than working 98 staff. No explanation has been given as how the workman and other were in excess when the strength in 1994 was much less than the present strength. The plea that the workman and other retrenched workmen were surplus, apparently, is contrary to the facts. The management's witness Y. K. Tripathi admitted staff strength to be more than 100 in his cross examination. There is no material to infer that the workman and other retrenched workmen were surplus, to warrant action under Section 25-F. The basis of notice under Section 25-F is, thus, rendered *non-est*, making the use of this section malicious exercise of power. This fact is also falsified by the letter of the Chief Catering Inspector, Central Railway, Jhansi dated 20-7-94, in reference to the letter No. C/192/CL/117 DC dated 12/14-7-94. This letter very specifically states that 58 posts of MRCL were sanctioned, as against only 42 MRCL were working and there existed shortage of 16 MRCL. This fact has not been controverted in the written statement or in the oral statement of the Divisional Commercial Manager (c). Thus, it is, fully proved that dispensation of the services of the workman, on ground of non-availability of work was totally unjustified and section 25-F was used as device to get rid of the workman and others. The management, deliberately concealed letter No. C/192/CL/117 DC dated 12/14-7-94, in reply to which the Chief Catering Inspector had clarified the position and required services of the workman and 20 others, whose retrenchment were under consideration.

11. In para 4 of the written statement, the management has taken plea that the engagement of the workman and others were without prior personal approval of the General Manager and so, the very appointments were illegal. A copy of the circular banning the recruitment has not been filed. However, assuming the ban on fresh engagement after 1980 the engagements, if not fraudulent, may be said 'irregular' and not illegal. This circular was administrative in nature and issued as guidelines to rationalize and regulate fresh engagements. Fresh engagements were not banned but regulated by a clog of approval of the General Manager. This conditioning in

fresh engagement did not render the appointment of the workman against the sanctioned strength, illegal. The so called guidelines permitted engagement of the casual labour subject to the approval of the General Manager. This administrative measures was to prevent abuse of engaging casual labours. This must be born in mind that casual engagement connotes engagement without post. In the present case, the engagements was against the posts. In any event, at the time of retrenchment, the status of the workman did not remain casual on acquiring temporary status as there existed sanctioned post as stated by the Chief Catering Inspector in his letter. Such administrative instructions can not take away legal status of the workman engaged by the competent authority. The workman and others were not apprised that they were being engaged against the instructions of the Railway Board. They were selected by the competent authority by adopting due process. Taking of approval was the duty of the authorities and not of theirs. The workman can not be punished if no approval sought. There is no material to show that approval was sought and rejected. There is also, no material that the concerned officers involved in engagement of the workman and others were penalized by the Railway management for having acted against the instructions of the Railway Board. The fact, is otherwise. Management's documents show that FA&CO Office, Bombay, by letter No. AC/958/E&G/CORES/II dated July 2, 1993 questioned engagement of 21 MRCL at Jhansi catering unit. Para 1 of this letter mentions letter No. Et(NG)II-CL/43 dated 7-6-84 circulated under office letter No. HPV/22513/R dated 9-8-84, 'no fresh face, shall be engaged as casual labour, without prior approval of the General Manager, some guidelines have been issued to all DRM by your office vide letter quoted above. This irregular (not illegal) appointments of 21 MRCLs were also questioned by the Chief Personnel Officer of the Central Railway by letter No. HPB/706/RT/C Labour date 19-8-83. Again Sr. DAO JHS letter dated 8-7-94 mentioned about irregular appointment. In concluding para of this letter 'discharge notice' to such appointees (MRCL) was desired. Management has filed office note dated 28-9-94. Mr. R. N. Srivastava, Divisional Commercial Manager (Catering) Jhansi submitted his note to Add. Divisional Railway Manager/Sr. D PO/Sr. D C.M. for dispensing services of 21 MRCL by issuing notice. On this note endorsements of the above authorities are given. It was decided to discharge them on the plea of there being no work and this note was approved. It appears that in view of this decision on office note, the services of the workman and 20 others were dispensed with taking assistance of section 25-F though the fact considered were different i.e. irregular appointment without approval. It has already been observed that the Chief Catering Inspector justified their retention on plea of availability of work. The chart of strength also justify this inference. It appears that the senior authorities, to save their skin adopted this device of dispensing services of the workman and 20 others. The workman and similarly placed were made to pay for sin of authorities after wasting six years of their prime age. As observed earlier, the workman had not obtained engagement by fraud. He was selected and engaged and further derived temporary status. All employees with temporary status are governed by the Railway Servants (Discipline & Appeal) Rules. He was no longer casual worker but worker with temporary status, to

be treated as temporary Railway servant. If the Railway treated their services irregular he should have been given opportunity to explain his position. The workman was not given any opportunity to justify his engagement after acquiring temporary status. This approach was against the rule of natural justice. Even on assuming his appointment not regular, his termination should have been preceded by a show cause notice.

12. It has already be observed that the management acted in malafide manner in terminating the services of the workman stating that there was no requirement. He was not given opportunity to justify his engagement. His termination, in fact, was punitive though recourse to section 25-F was adopted.

13. Let it be also debated whether section 25-F applied at all in case of the workman? The workman claims that his retrenchment could be made under section 25-N of the I.D. Act, 1947.

14. The contention of the management in reply, is, that catering unit, Jhansi is not an 'Industrial Establishment' within the meaning of 25 L(a)(i) of the I.D. Act, 1947, as it is not Factory under sub-section (m) of Section 2 of the Factories Act. Section 2(m) Factories Act, reads as follow :

(m) "factory" means any premises including the precincts thereof—

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on—

But does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952), or (a mobile unit belonging to the armed forces of the Union, *railway running shed or a hotel), restaurant or eating place*]

[Explanation I.—For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) in a day shall be taken into account:]

(Explanation II.—For the purposes of this clause, the mere that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.)

15. Taking advantage of exception clause, it is submitted by the management that catering unit, in railway is not an "Industrial Establishment". The exception clause mention 'railway running shed or a hotel, a restaurant or eating place'. The catering department comprising with several working units in Central Railway has to be taken as a single establishment, for computing number of employees to be more than 100. In any event, the workman has filed list of staff at catering unit, Jhansi for the year

1994 which shows the number of staff being 142. This fact is not controverted by evidence. The Divisional Commercial Manager Mr. Y. K. Tripathi, who appeared as a witness, admitted in cross-examination that number of working staff exceeded one hundred. This admission settled the controversy of number game, to bring the provision of chapter V-B in operation.

16. "The factor is as whether the activities in catering establishment in Central Railway, particularly, the working catering unit, Jhansi, may be taken as 'manufacturing' and so may be said a factory under section 2(m) of the Factory Act, 1948. The definition of 'factory', reproduced above, excludes railway running shed or a hotel, a restaurant or eating place. Undeniably, the catering unit, Jhansi is not a running shed or hotel. It is also not a restaurant in true sense. It prepares meal for the passengers in train or otherwise and serves in trains, platform and occasionally, in room marked for at on the platform. There is a common base kitchen to cater needs of the passengers, not only of Shatabdi Express but of other trains also. Evidently, catering unit, Jhansi is not covered by the exclusion clause of 'factory' as denied under section 2(m) of the Factory Act, 1948.

17. Preparation of food items in base kitchen and other related activities as packaging supply in train or platform etc. are run on commercial basis. The character of such activities in base kitchen is nothing but of manufacturing. These activities in manufacturing food etc in base kitchen are systematic and not casual.

18. Both the parties have cited case laws i.e. G.L. Hotel Limited & others Vs T.C. Sarin And Another (1993) 4 SCC 363, Cricket Club of India Vs Bombay Labour Union and another (AIR 1960 SC 276), (1993) 4 SCC 363 case is related to State Insurance Act, 1948. Incidentally, the activities in kitchen lodging etc. has been discussed. Likewise, the second case Cricket Club of India Vs Bombay Labour Union is also not directly related to activity of catering unit in railways. In (1996) III LLJ (Suppl) 370 Madras the workman employed in canteen run by SRF Ltd. Vs. Govt. of Tamil Nadu, the Madras High Court held cooking and preparation of food for sale as manufacturing process. This observation in the above case law is material and applicable to kitchen activities of the catering units in the railways.

19. In view of above discussions, it can be safely said that the provisions of section 25-N I.D. Act, 1947 was to be applied. If at all necessary, the workman was entitled to benefit under section 15-N and not under section 25-F I.D. Act, 1947. The retrenchment order under section 25-F is thus illegal. The workman is entitled to reinstatement with full back wages and all other service benefits.

20. Accordingly, the award is that the action of the management in terminating services of the workman under section 25-F was illegal. The workman is entitled to reinstatement with full back wages with other service benefits, assuming that there existed no termination at any point of time.

LUCKNOW
9-7-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2498.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ़ हैदराबाद के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, बंगलौर के पंचाट (संदर्भ संख्या सी.आर. 26/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-12012/80/91-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 15th July, 2002

S.O. 2498.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. C.R. 26/91) of the Central Government Industrial Tribunal/Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Hyderabad and their workman, which was received by the Central Government on 15-07-2002.

[No. L-12012/80/91-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
"SHRAM SADAN"

III MAIN, III CROSS, II PHASE, TUMKUR ROAD,
YESHWANTHPUR, BANGALORE.

Dated : 2nd JULY, 2002

PRESENT

HON'BLE SHRI V.N. KULKARNI, B.COM, LLB,

PRESIDING OFFICER

CGIT-CUM-LABOUR COURT,

BANGALORE.

C.R. No. 26/91

I PARTY

Shri Nagappa,
S/o Shri Tippanna,
C/o Shri V. Sripad,
H.No. 7-4-43,
Gajagar Pet,
Raichur-584 101

II PARTY

The General Manager,
State Bank of Hyderabad,
Head Office, Gun Foundry,
Hyderabad 500 177

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/80/91-IR-B-III dated 3rd May, 1991 for adjudication on the following schedule :

SCHEDULE

"Whether Shri Nagappa was a workman of the State Bank of Hyderabad ? If so, whether the action

of the State Bank of Hyderabad in cancelling the contract entered into with Shri Nagappa as Janata Deposit Collector, constituted termination of services? If so, to what relief Shri Nagappa is entitled to?"

2. The first party was working as Janata Deposit Collector with the Second Party Management. The Management cancelled the contract and therefore, Industrial Dispute is raised.

3. This is a dispute of 1991. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the first party workman is as under :—

5. It is alleged by the workman that he was appointed as Janata Deposit Collector (Pigmy Deposit Collector) by the Second Party during the year 1980 as per the terms and conditions laid down in the agreement. The first party was deposited a sum of Rs. 1000 as Security Deposit. He has rendered great services to the management. The management terminated his services w.e.f. 19th May, 1981 and the action of the management is illegal. A criminal case was also filed but the first party was acquitted. Workman has prayed to pass award in his favour.

6. Against this the case of the management is as under :

7. The first party is not a workman as defined under the Industrial Dispute Act. The main contention of the management is that under the Industrial Dispute Act the first party is not a workman and he was only an agent under an agreement dated 24th January, 1980 for the collection of Janata Deposit Collector under the Janata Deposit Scheme which has been in vogue in the Second Party Bank. There is no relationship of employer and employee between the First Party and the Second Party.

8. It is the further case of the management that first party committed various irregularities in the amount collected by him and there was a criminal case against the first party. It is true that he is acquitted.

9. It is the further case of the management that his services were not illegally terminated. No question of regularization of service arises. The agency of the first party was terminated because of irregularities committed by him. Management for these reasons and for some other reasons has prayed to reject the reference.

10. It is seen from the records that management examined MW1, Shri N. Gururaja Rao who was the Chief Manager of State Bank of India, Hyderabad at the relevant time. He has given detailed evidence.

11. It is seen from the records that the workman got examined himself as WW1 and he also examined one witness WW2, Shri Nagendrakumar. According to the evidence of WW1 he was working under the bank. WW2 has stated that he had pigmy account in the bank and he has withdrawn the amount from the account after confirming the balance which was true and correct.

12. It is seen from the records that this Tribunal by its award dated 31st December, 1993 rejected the reference.

13. It is seen from the records that both sides had series of litigation. The workman filed Writ Petition vide Writ Petition No. 8487/94 praying to quash the impugned

award dated 31st December, 1993. The award passed by this Tribunal was set aside and the matter was remitted to the Labour Court for fresh disposal. It appears that the management preferred Writ Appeal. Writ Appeal is WA. No. 5275/1998. That Writ Appeal was pending before the High Court of Karnataka, Bangalore.

14. Parties took adjournment on the ground that the Writ Appeal is pending. It is also seen from the records that a memo was filed by the management submitting that Writ Appeal No. 5275/1998 is still pending and there was stay order and submitted that this reference cannot be proceeded with. That memo is filed on 8th October, 2001.

15. I have carefully perused the records and say that the management has not filed any stay order. There is only a memo dated 8th October, 2001. Somehow the management took adjournment.

16. On 30th May, 2002 workman has filed memo along with copy of the Writ Appeal No. 5275/1998 and according to the management the same Writ Appeal was pending before the High Court of Karnataka, Bangalore. Writ Appeal No. 5275/1998 is disposed off on 10th December, 2001. Management did not submit fairly before this Tribunal that on 10th December, 2001 Writ Appeal No. 5275/1998 is disposed off and the same is dismissed.

17. Somehow on 16th May, 2002 it was submitted that the Writ Appeal is dismissed. Thereafter the case was posted for arguments. On 2nd July, 2002 the first party was present in person. I have heard him in detail. Shri Nagabhusan appeared and requested for adjournment and his request is refused as per the order sheet dated 2nd July, 2002.

18. I have refused the adjournment after carefully perusing the records. There are no good grounds to give adjournment. With this background now I shall proceed to consider the case of the workman on merit.

19. I have carefully read the evidence of the management and the workman.

20. In view of the orders passed by the Hon'ble Supreme Court of India reported in 2001 AIR SCW 749, it is clear that the first party is a Workman. The law laid down by the Hon'ble Supreme Court of India in *Indian Banks Association v/s. the Workman of Syndicate Bank and Others* reported in AIR 2001 Supreme Court 946 is that the Pigny Collectors are Workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

21. In view of this it is clear that the first party is a Workman. When the first party is a workman the management in order to terminate his agency or services has to issue charge sheet and hold some enquiry and after satisfying that the first party has committed misconduct. After this the management can take action.

22. It is clear from the records that before terminating the services, the bank did not issue any notice or held any Domestic Enquiry. Let us consider the evidence of MW1. Shri N. Gururaja Rao, Chief Manager, State Bank of Hyderabad. The relevant evidence according to him is that the work of the first party was not satisfactory and there were some complaints as per Ex. M-16 to 20. He further says that the bank made detailed investigation and there

was discrepancy between the entries of Ledger and Pass Book. During the course of cross-examination he admits that they have not produced Ex. M 16 to 21 before the Criminal Court.

23. It is seen from the records that in the Criminal case the first party workman is acquitted.

24. In the instant case, now that the first party is a Workman, the management before taking any action has to follow the procedure namely issue of Charge Sheet and holding of enquiry etc. But that is not done.

25. In view of the law laid down by the Hon'ble Supreme Court of India in the case referred earlier I proceed to pass the following Order :

ORDER

The reference is allowed. The management is directed to regularize the services of the workman as per the direction of the Hon'ble Supreme Court of India in Writ Appeal No. 5275/1998.

(Dictated to PA transcribed by her corrected and signed by me on 2nd July, 2002)

V N. KULKARNI, Presiding Officer

नए दिल्ली, 16 जुलाई, 2002

का.आ. 2499.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे, झांसी के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या आई डी-48/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-41012/242/2000-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th July, 2002

S.O. 2499.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ID-48/2001) of the Central Government Industrial Tribunal/Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Jhansi and their workman, which was received by the Central Government on 15-7-2002.

[No. L-41012/242/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present: RUDRESH KUMAR,
Presiding Officer

ID No. 48/2001

Ref No L-41012/242/2000/IR (B-I) dated 19-3-2001

BETWEEN

Majid Khan S/o Hamid Khan, R/o 249, Chamiapura,
Jhansi-284001

AND

The Divisional Commercial Manager (Catering)
Central Railway, Jhansi-284001

AWARD

By order No. L-41012/242/2000/IR(B-I) dated 19-3-2001, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between the Majid Khan S/o Hamid Khan, R/o 249, Chamiapura, Jhansi and the Divisional Commercial Manager (Catering), Central Railway, Jhansi for adjudication.

The reference under adjudication is as under :

‘WHETHER THE ACTION OF THE MANAGEMENT OF DIVISIONAL COMMERCIAL MANAGER (CATERING) IN THE TERMINATING THE SERVICES OF MAJID KHAN S/O HAMID KHAN UNDER SECTION 25F OF THE I.D. ACT, 1947 w.e.f. 30-9-1994 IS JUSTIFIED ? IF NOT, WHAT RELIEF THE WORKMAN IS ENTITLED ?

2. Admitted case of the parties, is, that Majid Khan the workman, was engaged in Catering Unit, Jhansi, Central Railway as Cleaner on 12-8-88. Initially, he was appointed as a daily wager, alongwith 13 others casual labourers, all appointed to discharge multifarious duties of cleaner/bearers and other allied works. These works had increased due to supply of food packages etc. in the Shatabdi Express. The workman along with others continuously worked for more than six years and acquired temporary status. The workman on acquiring temporary status was appointed Monthly Rated Casual Labour (MRCL) w.e.f. 29-10-89. He continued to work for about five years as MRCL, when abruptly on 30-9-94, his services were terminated with a notice under section 25F of the I.D. Act. By the said notice the management instead of waiting for a month, paid salary and retrenchment compensation quantified Rs. 6216 only.

3. The workman, initially challenged his termination at Central Administrative Tribunal, but did not find response due to lack of jurisdiction. This dispute was taken to the High Court in a Writ Petition but the merit of the dispute was not considered, as status of the workman and legality of his termination were to be determined on the basis of evidence and so, workman was desired to raise industrial dispute. Accordingly, this industrial dispute was raised before the Asstt. Labour Commissioner (C) and on failure of conciliation, the Central Government in exercise of its powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of the I.D. Act, 1947, referred the dispute for adjudication to this Tribunal.

4. As observed in foregoing para, the management admitted engagement of the workman and also grant of temporary status as MRCL w.e.f. 29-12-89 on him. However, it is pleaded that Railway Board imposed complete ban on

the engagement of fresh casual labour after the year 1980, without prior personal approval of the General Manager of the Zonal Railways. The workman together with 13 others casual labourers were engaged by the competent authority, without prior personal approval of the General Manager and so, it is contended that engagements were void-ab-initio, being against the rule and instructions of the Railway Board. Alternative, it is also stated that on process of streamlining man power under the MAN POWER PLANNING, the workman and 13 others were found surplus being in excess of requirement and so, were retrenched with legal compensation under the provision of section 25-F of the I.D. Act, 1947. The benefits envisaged under the said section were paid to the workman and others and their retrenchment can not be questioned. It is further pleaded that since 1994, the work of Catering Unit at Jhansi is running with efficiently and without disruption which demonstrate surplussage of the workman and other retrenched workmen.

5. The reference order requires judicial scrutiny of retrenchment dated 30-9-94 purported to have been made under section 25-F of the I.D. Act, on the basis of facts recited by the parties. The termination is mainly challenged on grounds, viz:

- (i) Malicious action under section 25-F of the I.D. Act, 1947 using the said provision as camouflage.
- (ii) Non-compliance of section 25-N; and
- (iii) On acquiring temporary status the workman derived status of temporary servant and was governed by the Railway Servants (Disciplinary & Appeal) Rules, and his termination without adhering to the said rules and principle of natural justice being illegal.

6. Both the parties have filed oral and documentary evidence to substantiate their respective versions. The workman filed list of employees of Catering Unit, Jhansi for the year 1994 showing 142 employees at work in the said year to substantiate that Catering Unit, Jhansi was an ‘Industrial Undertaking’ under section 25-K and he was entitled to protection and benefit under section 25-N. A copy of letter No. C 102/CL/II-DC dated 28-12-92 is filed to show temporary status accorded to him and 20 other casual labourers. Temporary status was granted to the workman w.e.f. 30-12-89. This letter further mentions approval of the Sr. Divisional Commercial Manager, Jhansi, in granting of temporary status. Copy of notice under section 25-F of the I.D. Act, 1947 terminating his services is also filed. Medical certificate is also filed to show his health fully conforming to requirement of services in catering unit. The workman has also filed a copy of letter of the Chief Catering Inspector dated 12/14-7-94, in respect to proposal discharging of 21 Monthly Rated Casual Labours including him. In addition, the workman relied on his own affidavit. He was cross-examined by the management.

7. The management has also filed a copy of a chart indicating total strength (designation wise) of the catering unit, Jhansi including Shatabdi express, a copy of the FA & CAO letter dated 2-7-93, a copy of CPO (HQ) letter dated

19-8-93, a copy of letter dated 8-7-94 of the Sr. Divl. Accounts Officer/Central Railway, Jhansi, a copy of official notice dated 28-9-94 regarding disengagement of the services of workman and others, a copy of letter dated 28-9-94 by DRM regarding his disengagement and of others. The management of the Central Railway also examined Mr. Y.K. Tripathi, Divisional Commercial Manager (Catering) who was cross-examined on behalf of the workman.

8. Adverting to first submission that section 25-F was applied maliciously and this provision was used as camouflage. The facts of appointment acquiring of temporary status and termination with notice under section 25-F required to be analysed. The workman and others were engaged in Catering Unit of Jhansi to strengthen working of the said unit. No separate establishment or unit was formed to cater requirements of the Shatabdi Express. The letter of the Chief Catering Inspectors mentions that newly appointed casual worker/cleaners, were retained in the unit and instead 14 of the senior were assigned work for Shatabdi Express. This fact remains uncontroverted. This further corroborate plea of the workman that he and others were the employees of the catering unit, Jhansi and not of any separate unit in the name of Shatabdi Express unit, as pleaded by the management. In fact, the base kitchen was common. The workman and others were engaged on selection due to increased load of work. Their engagement were made by the competent authority. The management has not disputed legality of the appointment grant of and temporary status to them except stating non-obtaining of approval of the General Manager. Also retrenchment is justified on plea of surplusage of staff.

9. In the notice of retrenchment dated 30-9-94, it is specifically mentioned,

आपकी सेवाओं की आवश्यकता नहीं होने के कारण आपकी सेवाओं को एतद्वारा तत्काल समाप्त हो गया है।

10. Natural meaning of the above expression is that there were surplus staff and the services of the workman and others were not needed. It is stated in para 5 of the written statement, "that however, subsequently due to shrinkage of work after streamlining of man power planning, it was seen that services of these casual labours including claimant were no more required as there are already excess casual labours". To substantiate the above statement, the management has annexed a chart indicating total strength (designation wise) at Catering Unit, Jhansi including Shatabdi Express. This chart has been classified in two parts: first part showing present total strength and the second part showing total strength at the time of retrenchment i.e. on 30-9-94. A glance over this chart, indicate present total strength 98, including 44 bearers and 18 cleaners. On the date of retrenchment i.e. 30-9-94, the strength at Catering Unit, Jhansi was 63 including 24 bearers and 10 cleaners. This chart falsifies statement in para 5 of the written statement. The strength since increased by $(98-63)=35$ at present. The number of bearers and cleaners also increased. The shrinkage of staff on man power planning is obviously an after thought and false, particularly, when the present strength increased by more than 33% i.e. by 35, in comparison to year of the retrenchment. Even if the retrenched staff (21) is included, the total $(63+21)=84$ is less than working 98 staff. No

explanation has been given as how the workman and other were in excess when the strength in 1994 was much less than the present strength. The plea that the workman and other retrenched workmen were surplus, apparently, is contrary to the facts. The management's retrenched workmen were surplus, apparently, is contrary to the facts. The management witness Y. K. Tripathi admitted staff strength to be more than 100 in his cross-examination. There is no material to infer that the workman and other retrenched workmen were surplus, to warrant action under section 25-F. The basis of notice under section 25-F is, thus, rendered non est. making the use of this section malicious exercise of power. This fact is also falsified by the letter of the Chief Catering Inspector, Central Railway, Jhansi dated 20-7-94, in reference to the letter No. C/192/CL/117DC dated 12/14-7-94. This letter very specifically states that 58 posts of MRCL were sanctioned, as against only 42 MRCL were working and there existed shortage of 16 MRCL. This fact has not been controverted in the written statement or in the oral statement of the Divisional Commercial Manager. Thus, it is, fully proved that dispensation of the services of the workman, on ground of non-availability of work was totally unjustified and section 25-F was used as device to get rid of the workman and others. The management, deliberately concealed letter No. C/192/CL/117DC dated 12/14-7-94, in reply to which the Chief Catering Inspector had clarified the position and required services of the workman and 20 others, whose retrenchment were under consideration.

11. In para 4 of the written statement, the management has taken plea that the engagement of the workman and others were without prior personal approval of the General Manager and so, the very appointments were illegal. A copy of the circular banning the recruitment has not been filed. However, assuming the ban on fresh engagement after 1980 the engagements, if no fraudulent may be said irregular and not illegal. This circular was administrative in nature and issued as guidelines to rationalize and regulate fresh engagements. Fresh engagements were not banned but regulated by a clog of approval of the General Manager. This conditioning in fresh engagement did not render the appointment of the workman against the sanctioned strength illegal. The so-called guidelines permitted engagement of the casual labour subject to the approval of the General Manager. This administrative majors was to prevent abuse of engaging casual labourers this must be born in mind that casual engagement connotes engagement without post. In the present case, the engagements was against the posts. In any event, at the time of retrenchment, the status of the workman did not remain casual on acquiring temporary status as there existed sanctioned post as stated by the Chief Catering Inspector in his letter. Such administrative instructions can not take away legal status of the workman engaged by the competent authority. The workman and others were not apprised that they were being engaged against the instructions of the Railway Board. They were selected by the competent authority by adopting due process. Taking of approval was the duty of the authorities and not of their. The workman can not be punished if no approval sought. There is no material to show that approval was sought and rejected. There is also, no material that the concerned officers involved in engagement of the workman and others

were penalized by the Railway management for having acted against the instructions of the Railway Board. The fact, is otherwise. Management's documents show that FA&CO Office, Bombay, by letter No. AC/958/E&G/CORES/II dated July 2, 1993 questioned engagement of 21 MRCL at Jhansi catering unit. Para 1 of this letter mentions letter No. E(NG)II-CL/43 dated 7-6-84 circulated under office letter No. HPV/22513/R dated 9-8-84, no fresh face, shall be engaged as casual labour, without prior approval of the General Manager, some guidelines have been issued to all DRM by your office vide letter quoted above. This irregular (not illegal) appointments of 21 MRCLs were also questioned by the Chief Personnel Officer of the Central Railway by letter No. HPB/706/RT/C. Labour date 19-8-93. Again Sr. DAO JHS letter dated 8-7-94 mentioned about irregular appointment. In concluding para of this letter 'discharge notice' to such appointees (MRCL) was desired. Management has filed office note dated 28-9-94, Mr. R.N. Srivastava, Divisional Commercial Manager (Catering) Jhansi submitted his note to Add. Divisional Railway Manager/Sr. D.P.O./Sr. D.C.M for dispensing services of 21 MRCL by issuing notice. On this note endorsements of the above authorities are given. It was decided to discharge them on the plea of there being no work and this note was approved. It appears that in view of this decision on office note, the services of the workman and 20 others were dispensed with taking assistance of section 25-F though the fact considered were different i.e. irregular appointment without approval. It has already been observed that the Chief Catering Inspector justified their retention on plea of availability of work. The chart of strength also justify this inference. It appears that the senior authorities, to save their skin adopted this device of dispensing services of the workman and 20 others. The workman and similarly placed were made to pay for sin of authorities after wasting six years of their prime age. As observed earlier, the workman had not obtained engagement by fraud. He was selected and engaged and further derived temporary status. All employees with temporary status are governed by the Railway Servants (Discipline & Appeal) Rules. He was no longer casual worker but worker with temporary status, to be treated as temporary Railway servant. If the Railway treated their services irregular he should have been given opportunity to explain his position. The workman was not given any opportunity to justify his engagement after acquiring temporary status. This approach was against the rule of natural justice. Even on assuming his appointment not regular, his termination should have been preceded by a show cause notice.

12. It has already be observed that the management acted in malafide manner in terminating the services of the workman stating that there was no requirement. He was not given opportunity to justify his engagement. His termination, in fact, was punitive though recourse to section 25-F was adopted.

13. Let it be also debated whether Section 25-F applied at all in case of the workman? The workman claims that his retrenchment could be made under Section 25-N of the I.D. Act, 1947.

14. The contention of the management in reply, is, that catering unit, Jhansi is not an 'Industrial Establishment' with the meaning of 25 L(a)(i) of the

I.D. Act, 1947, as it is not factory under sub-section (m) of Section 2 of the Factories Act. Section 2(m) Factories Act, reads as follow.

(m) "factory" means any premises including the precincts thereof—

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on—

But does not include a mine subject to the operation of [the Mines Act, 1952(35 of 1952), or (a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel), restaurant or eating place].

[Explanation I.—For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) in a day shall be taken into account].

[Explanation II.—For the purposes of this clause, the mere that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof].

15. Taking advantage of exception clause, it is submitted by the management that catering unit, in railway is not an "Industrial Establishment". The exception clause mention 'railway running shed or a hotel, a restaurant or eating place'. The catering department comprising with several working units in Central Railway has to be taken as a single establishment, for computing number of employees to be more than 100. In any event, the workman has filed list of staff at catering unit, Jhansi for the year 1994 which shows the number of staff being 142. This fact is not controverted by evidence. The Divisional Commercial Manager Mr. Y.K. Tripathi, who appeared as a witness, admitted in cross examination that number of working staff exceeded one hundred. This admission settled the controversy of number game, to bring the provision of chapter V-B in operation.

16. The factor is as whether the activities in catering establishment in Central Railway, particularly, the working catering unit, Jhansi, may be taken as manufacturing and so may be said a factory under section 2(m) of the Factory Act, 1948. The definition of 'factory', reproduced above, excludes railway running shed or a hotel, a restaurant or eating place. Undenrably, the catering unit, Jhansi is not a running shed or hotel. It is also not a restaurant in true sense. It prepares meal for the passengers in train or otherwise and serves in trains, platform and occasionally, in room marked for at on the platform. There is a common base kitchen to cater needs of the passengers, not only of

Shatabdi Express but of other trains also. Evidently, catering unit Jhansi is not covered by the exclusion clause of 'factory' as defined under section 2(m) of the Factory Act, 1948."

17. Preparation of food items in base kitchen and other related activities as packaging supply in train or platform etc. are run on commercial basis. The character of such activities in base kitchen is nothing but of manufacturing. These activities in manufacturing food etc. in base kitchen are systematic and not casual.

Both the parties have cited case laws i.e. G.L. Hotel Limited & Others Vs T.C. Sarin and Another (1993) 4 SCC 363, Cricket Club of India Vs. Bombay Labour Union and Another (AIR 1960 SC 276), (1993) 4 SCC 363 case is related to State Insurance Act, 1948. Incidentally, the activities in kitchen lodging etc. has been discussed. Likewise, the second case Cricket Club of India Vs. Bombay Labour Union is also not directly related to activity of catering unit in railways. IW (1996) III LLJ (Suppl) 370 Madras the workman employed in canteen run by SRF Ltd. Vs. Govt. of Tamil Nadu, the Madras High Court held cooking and preparation of food for sale as manufacturing process. This observation in the above case law is material and applicable to kitchen activities of the catering units in the railways.

19. In view of above discussions, it can be safely said that the provisions of section 25-N I.D. Act, 1947 was to be applied. If at all necessary, the workman was entitled to benefit under section 15-N and not under section 25-F I.D. Act, 1947. The retrenchment order under section 25-F is thus illegal. The workman is entitled to reinstatement with full back wages and all other service benefits.

20. Accordingly, the award is that the action of the management in terminating services of the workman under section 25-F was illegal. The workman is entitled to reinstatement with full back wages with other service benefits, assuming that there existed no termination at any point of time.

LUCKNOW

10-7-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2500.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे, झांसी के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या आई डी-47/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-41012/243/2000-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th July, 2002

S.O. 2500.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ID-47/2001) of the Central Government Industrial Tribunal/Labour

Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Jhansi and their workman, which was received by the Central Government on 15-7-2002.

[No. L-41012/243/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, LUCKNOW

Present: RUDRESH KUMAR,

Presiding Officer

I.D. No. 47/2001

Ref. No. L-41012/243/2000/IR (B-I) dated 19-3-2001

BETWEEN

Mahesh Prasad S/o Shyam Lal, R/o 199, Chand Darwaja,
Nai Basti, Jhansi-284002

AND

The Divisional Commercial Manager (Catering)

Central Railway, Jhansi-284001

AWARD

By order No. L-41012/243/2000/IR (B-I) dated 19-3-2001, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub section (1) and section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between the Mahesh Prasad S/o Shyam Lal, R/o 199, Chand Darwaja, Nai Basti, Jhansi and the Divisional Commercial Manager (Catering), Central Railway, Jhansi for adjudication.

The reference under adjudication is as under :

'WHETHER THE ACTION OF THE MANAGEMENT OF DIVISIONAL COMMERCIAL MANAGER (CATERING) IN THE TERMINATING THE SERVICES OF MAHESH PRASAD S/O SHYAM LAL UNDER SECTION 25F OF THE I.D. ACT, 1947 w.e.f. 30-9-1994 IS JUSTIFIED? IF NOT, WHAT RELIEF THE WORKMAN IS ENTITLED TO ?

2. Admitted case of the parties, is, that Mahesh Prasad the workman, was engaged in Catering Unit, Jhansi, Central Railway as Cleaner on 10-7-88. Initially, he was appointed as a daily wager, alongwith 13 others casual labours, all appointed to discharge multifarious duties of cleaner/bearers and other allied works. These works had increased due to supply of food packages etc. in the Shatabdi Express. The workman along with others continuously worked for more than six years and acquired temporary status. The workman on acquiring temporary status was appointed Monthly Rated Casual Labour (MRCL) w.e.f. 29-10-89. He continued to work for about five years as MRCL, when abruptly on 30-9-94, his services were terminated with a notice under section 25F of the I.D. Act. By the said notice the management instead of waiting for a month, paid salary and retrenchment compensation quantified Rs 6216 only.

3. The workman, initially challenged his termination at Central Administrative Tribunal, but did not find response due to lack of jurisdiction. This dispute was taken

to the High Court in a Writ Petition but the merit of the dispute was not considered, as status of the workman and legality of his termination were to be determined on the basis of evidence and so, workman was desired to raise industrial dispute. Accordingly, this industrial dispute was raised before the Asstt. Labour Commissioner (C) and on failure of conciliation, the Central Government in exercise of its powers conferred by clause (d) of sub section (1) and sub section 2(A) of the I.D. Act, 1947, referred the dispute for adjudication to this tribunal.

4. As observed in foregoing para. the management admitted engagement of the workman and also grant of temporary status as MRCL w.e.f. 30-12-89 on him. However, it is pleaded that Railway Board imposed complete ban on the engagement of fresh casual labour after the year 1980, without prior personal approval of the General Manager of the Zonal Railways. The workman together with 13 others casual labours were engaged by the competent authority, without prior personal approval of the General Manager and so, it is contended that engagements were void-ab-initio, being against the rule and instructions of the Railway Board. Alternative, it is also stated that on process of streamlining man power under the MAN POWER PLANNING, the workman and twenty others were found surplus being in excess of requirement and so, were retrenched with legal compensation etc. under the provision of section 25-F of the I.D. Act, 1947. The benefits envisaged under the said section were paid to the workman and others and their retrenchment can not be questioned. It is further pleaded that since 1994, the work of Catering Unit at Jhansi is running with efficiently and without disruption which demonstrate surplusage of the workman and other retrenched workmen.

5. The reference order requires judicial scrutiny of retrenchment dated 30-9-94 purported to have been made under section 25-F of the I.D. Act, on the basis of facts recited by the parties. The termination is mainly challenged on grounds, viz;

- (i) Malicious action under section 25-F of the I.D. Act, 1947 using the said provision as camouflage;
- (ii) Non compliance of section 25-N; and
- (iii) On acquiring temporary status the workman derived status of temporary servant and was governed by the Railway Servants (Disciplinary & Appeal) Rules, and his termination without adhering to the said rules and principle of natural justice being illegal

6. Both the parties have filed oral and documentary evidence to substantiate their respective versions. The workman filed list of employees at Catering Unit, Jhansi for the year 1994 showing 142 employees at work in the said year to substantiate that Catering Unit, Jhansi was an 'Industrial Undertaking' under section 25-K and he was entitled to protection and benefit under section 25-N. A copy of letter No. C/102/CL/II-DC dated 28-12-92 is filed to show temporary status accorded to him and 20 other casual labours Temporary status was granted to the workman w.e.f. 30-12-89. This letter further mentions approval of the Sr. Divisional Commercial Manager, Jhansi, in granting of

temporary status. Copy of notice under section 25-F of the I. D. Act, 1947 terminating his services is also filed. Medical certificate is also filed to show his health fully conforming to requirement of services in catering unit. The workman has also filed a copy of letter of the Chief Catering Inspector dated 12/14-7-94, in respect to proposal discharging of 21 Monthly Rated Casual Labours including him. In addition, the workman relied on his own affidavit. He was cross-examined by the management.

7. The management has also filed a copy of a chart indicating total strength (designation wise) of the catering unit, Jhansi including Shatabdi Express, a copy of the FA & CAO letter dated 2-7-93, a copy of CPO (HQ) letter dated 19-8-93, a copy of letter dated 8-7-94 of the Sr. Divl. Accounts Officer/Central Railway, Jhansi, a copy of official notice dated 28-9-94 regarding disengagement of the services of workman and others, a copy of letter dated 28-9-94 by DRM regarding his disengagement and of others. The management of the Central Railway also examined Mr. Y.K. Tripathi, Divisional Commercial Manager (Catering) who was cross-examined on behalf of the workman.

8. Adverting to first submission that Section 25-F was applied maliciously and this provision was used as camouflage. The facts of appointment acquiring of temporary status and termination with notice under Section 25-F required to be analysed. The workman and others were engaged in Catering Unit of Jhansi to strengthen working of the said unit. No separate establishment or unit was formed to cater requirements of the Shatabdi Express. The letter of the Chief Catering Inspectors mentions that newly appointed casual worker/cleaners, were retained in the unit and instead 14 of the senior were assigned work for Shatabdi Express. This fact remains uncontroverted. This further corroborate plea of the workman that he and others were the employees of the catering unit, Jhansi and not of any separate unit in the name of Shatabdi Express unit; as pleaded by the management. In fact, the base kitchen was common. The workman and others were engaged on selection due to increased load of work. Their engagement were made by the competent authority. The management has not disputed legality of the appointment grant of and temporary status to them except stating non obtaining of approval of the General Manager. Also retrenchment is justified on plea of surplusage of staff.

9. In the notice of retrenchment dated 30-9-94, it is specifically mentioned.

आपकी सेवाओं की आवश्यकता नहीं होने के कारण आपकी सेवाओं को एतद्वारा तत्काल प्रभाव से समाप्त की जाती है.....

10. Natural meaning of the above expression is that there were surplus staff and the services of the workman and others were not needed. It is stated in para 5 of the written statement, "that however, subsequently due to shrinkage of work after streamlining of man power planning, it was seen that services of these casual labours including claimant were no more required as there are already excess casual labours" ... To substantiate the above statement, the management has annexed a chart indicating total strength (designation wise) at Catering Unit, Jhansi including Shatabdi Express. This chart has been classified in two parts, first part showing present total

strength and the second part showing total strength at the time of retrenchment i.e. on 30-9-94. A glance over this chart, indicate present total strength 98, including 44 bearers and 18 cleaners. On the date of retrenchment i.e. 30-9-94, the strength at Catering Unit, Jhansi was 63 including 24 bearers and 10 cleaners. This chart falsifies statement in para 5 of the written statement. The strength since increased by $(98-63) = 35$ at present. The number of bearers and cleaners also increased. The shrinkage of staff on man power planning is obviously an after thought and false, particularly, when the present strength increased by more than 33% i.e. by 35, in comparison to year of the retrenchment. Even if the retrenched staff (21) is included, the total $(63 + 21) = 84$ is less than working 98 staff. No explanation has been given as how the workman and other were in excess when the strength in 1994 was much less than the present strength. The plea that the workman and other witness Y. K. Tripathi admitted staff strength to be more than 100 in his cross examination. There is no material to infer that the workman and other retrenched workmen were surplus, to warrant action under section 25-F. The basis of notice under section 25-F is, thus, rendered *non-exist*, making the use of this section malicious exercise of power. This fact is also falsified by the letter of the Chief Catering Inspector, Central Railway, Jhansi dated 20-7-94, in reference to the letter No. C/192/CL/117 DC dated 12/14-7-94. This letter very specifically states that 58 posts of MRCL were sanctioned, as against only 42 MRCL were working and there existed shortage of 16 MRCL. This fact has not been controverted in the written statement or in the oral statement of the Divisional Commercial Manager. Thus, it is, fully proved that dispensation of the services of the workman, on ground of non availability of work was totally unjustified and section 25-F was used as device to get rid of the workman and others. The management, deliberately concealed letter No. C/192/CL/117 DC dated 12/14-7-94 in reply to which the Chief Catering Inspector had clarified the position and required services of the workman and 20 others, whose retrenchment were under consideration.

11 In para 4 of the written statement, the management has taken plea that the engagement of the workman and others were without prior personal approval of the General Manager and so, the very appointments were illegal. A copy of the circular banning the recruitment has not been filed. However, assuming the ban on fresh engagement after 1980 the engagements, if not fraudulent may be said irregular and not illegal. This circular was administrative in nature and issued as guidelines to rationalize and regulate fresh engagements. Fresh engagements were not banned but regulated by a clog of approval of the General Manager. This conditioning in fresh engagement did not render the appointment of the workman against the sanctioned strength illegal. The so called guidelines permitted engagement of the casual labour subject to the approval of the General Manager. This administrative majors was to prevent abuse of engaging casual labours this must be born in mind that casual engagement connotes engagement without post. In the present case, the engagements was against the posts. In any event, at the time of retrenchment, the status of the workman did not remain casual on acquiring temporary status as there existed sanctioned post as stated by the Chief Catering

Inspector in his letter. Such administrative instructions can not take away legal status of the workman engaged by the competent authority. The workman and others were not apprised that they were being engaged against the instructions of the Railway Board. They were selected by the competent authority by adopting due process. Taking of approval was the duty of the authorities and not of their. The workman can not be punished if no approval sought. There is no material to show that approval was sought and rejected. There is also, no material that the concerned officers involved in engagement of the workman and others were penalized by the Railway management for having acted against the instructions of the Railway Board. The fact, is otherwise. Management's documents show that FA&CO Office, Bombay, by letter No. AC/958/E&G/CORES/II dated July 2, 1993 questioned engagement of 21 MRCL at Jhansi catering unit. Para 1 of this letter mentions letter No. E(NG)II-CL/43 dated 7-6-84 circulated under office letter No. HPV/22513/R dated 9-8-84, no fresh face, shall be engaged as casual labour, without prior approval of the General Manager, some guidelines have been issued to all DRM by your office vide letter quoted above. This irregular (not illegal) appointments of 21 MRCLs were also questioned by the Chief Personnel Officer of the Central Railway by letter No. HPB/706/RT/C Labour date 19-8-93. Again Sr. DAO JHS letter dated 8-7-94 mentioned about irregular appointment. In concluding para of this letter 'discharge notice' to such appointees (MRCL) was desired. Management has filed office note dated 28-9-94. Mr. R.N. Srivastava, Divisional Commercial Manager (Catering) Jhansi submitted his note to Add Divisional Railway Manager/Sr. D.P.O./Sr. D.C.M. for dispensing services of 21 MRCL by issuing notice. On this note endorsements of the above authorities are given. It was decided to discharge them on the plea of there being no work and this note was approved. It appears that in view of this decision on office note, the services of the workman and 20 others were dispensed with taking assistance of section 25-F though the fact considered were different i.e. irregular appointment without approval. It has already been observed that the Chief Catering Inspector justified their retention on plea of availability of work. The chart of strength also justify this inference. It appears that the senior authorities, to save their skin adopted this device of dispensing services of the workman and 20 others. The workman and similarly placed were made to pay for sin of authorities after wasting six years of their prime age. As observed earlier, the workman had not obtained engagement by fraud. He was selected and engaged and further derived temporary status. All employees with temporary status are governed by the Railway Servants (Discipline & Appeal) Rules. He was no longer casual worker but worker with temporary status, to be treated as temporary Railway servant. If the Railway treated their services irregular he should have been given opportunity to explain his position. The workman was not given any opportunity to justify his engagement after acquiring temporary status. This approach was against the rule of natural justice. Even on assuming his appointment not regular, his termination should have been preceded by a show cause notice.

12 It has already been observed that the management acted in malafid manner in terminating the services of the workman stating that there was no requirement. He

was not given opportunity to justify his engagement. His termination, in fact, was punitive though recourse to section 25-F was adopted.

13. Let it be also debated whether section 25-F applied at all in case of the workman? The workman claims that his retrenchment could be made under section 25-N of the I.D. Act, 1947.

14. The contention of the management in reply, is, that catering unit, Jhansi is not an 'Industrial Establishment' within the meaning of 25 L(a)(i) of the I.D. Act, 1947, as it is not factory under sub-section (m) of section 2 of the Factories Act. Section 2(m) Factories Act, reads as follow:

(m) "factory" means any premises including the precincts thereof—

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on—

But does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952), or (a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel), restaurant or eating places].

(Explanation I.—For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) in a day shall be taken into account.)

(Explanation II —For the purposes of this clause, the mere that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.)

15. Taking advantage of exception clause, it is submitted by the management that catering unit, in railway is not an "Industrial Establishment". The exception clause mention 'railway running shed or a hotel, a restaurant or eating place'. The catering department comprising with several working units in Central Railway has to be taken as a single establishment, for computing number of employees to be more than 100. In any event, the workman has filed list of staff at catering unit Jhansi for the year 1994 which shows the number of staff being 142. This fact is not controverted by evidence. The Divisional Commercial Manager Mr. Y.K. Tripathi who appeared as a witness, admitted in cross examination that number of working staff exceeded one hundred. This admission settled the controversy of number game. To bring the provision of chapter V-B in operation

16. The factor is as whether the activities in catering establishment in Central Railway, particularly, the working

catering unit, Jhansi, may be taken as manufacturing and so may be said a factory under section 2(m) of the Factory Act, 1948. The definition of 'factory', reproduced above, excludes railway running shed or a hotel, a restaurant or eating place. Undeniably, the catering unit Jhansi is not a running shed or hotel. It is also not a restaurant in true sense. It prepares meal for the passengers in train or otherwise and serves in trains, platform and occasionally, in room marked for at on the platform. There is a common base kitchen to cater needs of the passengers, not only of Shatabdi Express but of other trains also. Evidently, catering unit Jhansi is not covered by the exclusion clause of 'factory' as defined under section 2(m) of the factory Act, 1948.

17. Preparation of food items in base kitchen and other related activities as packaging supply in train or platform etc. are run on commercial basis. The character of such activities in base kitchen is nothing but of manufacturing. These activities in manufacturing food etc. in base kitchen are systematic and not casual.

Both the parties have cited case laws i.e. G.L. Hotel Limited & Others Vs. T.C. Sarin and Another (1993) 4 SSC 363, Cricket Club of India Vs. Bombay Labour Union and another (AIR 1960 SC 276), (1993) 4 SSC 363 case is related to State Insurance Act, 1948. Incidentally, the activities in kitchen lodging etc. has been discussed. Likewise, the second case Cricket Club of India Vs. Bombay Labour Union is also not directly related to activity of catering unit in railways. 1W (1996) III LLJ (Suppl) 370 Madras the workman employed in canteen run by Govt. of Tamil Nadu, the Madras High Court held cooking and preparation of food for sale as manufacturing process. This observation in the above case law is material and applicable to kitchen activities of the catering units in the railways.

19. In view of above discussions, it can be safely said that the provision of section 25-N I.D. Act, 1947 was to be applied. If at all necessary, the workman was entitled to benefit under section 15-N and not under section 25-F I.D. Act, 1947. The retrenchment order under section 25-F is thus illegal. The workman is entitled to reinstatement with full back wages and all other service benefits.

20. Accordingly, the award is that the action of the management in terminating services of the workman under section 25-F was illegal. The workman is entitled to reinstatement with full back wages with other service benefits, assuming that there existed no termination at any point of time.

LUCKNOW

10-7-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2501.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे, झांसी के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या आई डी-49/2001) को

प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-41012/245/2000-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th July, 2002

S.O. 2501.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ID-49/2001) of the Central Government Industrial Tribunal Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Jhansi and their workman, which was received by the Central Government on 15-7-2002.

[No. L-41012/245/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, LUCKNOW

Present : RUDRESH KUMAR,

Presiding Officer

I.D. No. 49/2001

Ref. No. L-41012/245/2000/IR (B-I) dated 19-3-2001

BETWEEN

Sher Khan S/o Pir Khan R/o 115/3 NR Police Chowky,
Prem Nagar, Jhansi-284001

AND

The Divisional Commercial Manager (Catering)

Central Railway, Jhansi-284001

AWARD

By order No. L-41012/245/2000/IR(B-I) dated 19-3-2001, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub section (1) and section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Sher Khan S/o Pir Khan R/o 115/3 NR Police Chowky, Prem Nagar, Jhansi and the Divisional Commercial Manager (Catering), Central Railway, Jhansi for adjudication.

The reference under adjudication is as under :

“WHETHER THE ACTION OF THE MANAGEMENT OF DIVISIONAL COMMERCIAL MANAGER (CATERING) IN TERMINATING THE SERVICES OF SHER KHAN S/O PIR KHAN UNDER SECTION 25F OF THE I.D. ACT, 1947 w.e.f. 30-9-1994 IS JUSTIFIED ? IF NOT, WHAT RELIEF THE WORKMAN IS ENTITLED ?”

2. Admitted case of the parties, is, that Sher Khan, the workman, was engaged in Catering Unit, Jhansi, Central Railway as Cleaner on 7-4-89. Initially, he was appointed as a daily wager, alongwith 13 others casual labours, all appointed to discharge multifarious duties of cleaner/bearers and other allied works. These works had increased due to supply of food packages etc. in the Shatabdi Express. The workman along with others continuously worked for more than six years and acquired temporary

status. The workman on acquiring temporary status was appointed Monthly Rated Casual Labour (MRCL) w.e.f. 30-12-89. He continued to work for about five years as MRCL, when abruptly on 30-9-94, his services were terminated with a notice under section 25-F of the I.D. Act. By the said notice the management instead of waiting for a month, paid salary and retrenchment compensation quantified Rs. 6216 only.

3. The workman, initially challenged his termination at Central Administrative Tribunal, but did not find response due to lack of jurisdiction. This dispute was taken to the High Court in a Writ Petition but the merit of the dispute was not considered, as status of the workman and legality of his termination were to be determined on the basis of evidence and so, workman was desired to raise industrial dispute. Accordingly, this industrial dispute was raised before the Asstt. Labour Commissioner (C) and on failure of conciliation, the Central Government in exercise of its powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of the I.D. Act, 1947, referred the dispute for adjudication to this tribunal.

4. As observed in foregoing para, the management admitted engagement of the workman and also grant of temporary status as MRCL w.e.f. 30-12-89 on him. However, it is pleaded that Railway Board imposed complete ban on the engagement of fresh casual labour after the year 1980, without prior personal approval of the General Manager of the Zonal Railways. The workman together with 13 others casual labours were engaged by the competent authority, without prior personal approval of the General Manager and so, it is contended that engagements were void-ab-initio, being against the rule and instructions of the Railway Board. Alternative, it is also stated that on process of streamlining man-power under the MAN-POWER PLANNING, the workman and twenty others were found surplus being in excess of requirement and so, were retrenched with legal compensation etc. under the provision of section 25-F of the I.D. Act, 1947. The benefits envisaged under the said section were paid to the workman and others and their retrenchment can not be questioned. It is further pleaded that since 1994, the work of Catering Unit at Jhansi is running with efficiently and without disruption which demonstrate surplussage of the workman and other retrenched workmen.

5. The reference order requires judicial scrutiny of retrenchment dated 30-9-94 purported to have been made under section 25-F of the I.D. Act, on the basis of facts recited by the parties. The termination is mainly challenged on grounds, viz.:

- (i) Malicious action under section 25-F of the I.D. Act, 1947 using the said provision as camouflage;
- (ii) Non compliance of section 25-N; and
- (iii) On acquiring temporary status the workman derived status of temporary servant and was governed by the Railway Servants (Disciplinary & Appeal) Rules, and his termination without adhering to the said rules and principle of natural justice being illegal.

6. Both the parties have filed oral and documentary evidence to substantiate their respective versions. The

workman filed list of employees at Catering Unit, Jhansi for the year 1994 showing 142 employees at work in the said year to substantiate that Catering Unit, Jhansi was an 'Industrial Undertaking' under section 25-K and he was entitled to protection and benefit under section 25-N. A copy of letter No. C/102/CL/II-DC dated 28-12-92 is filed to show temporary status accorded to him and 20 other casual labours. Temporary status was granted to the workman w.e.f. 30-12-89. This letter further mentions approval of the Sr. Divisional Commercial Manager, Jhansi, in granting of temporary status. Copy of notice under section 25-F of the I. D. Act, 1947 terminating his services is also filed. Medical certificate is also filed to show his health fully conforming to requirement of services in catering unit. The workman has also filed a copy of letter of the Chief Catering Inspector dated 12/14-7-94, in respect to proposal discharging of 21 Monthly Rated Casual Labours including him. In addition, the workman relied on his own affidavit. He was cross-examined by the management.

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Adverting to first submission that section 25-F was applied maliciously and this provision was used as camouflage. The facts of appointment acquiring of temporary status and termination with notice under section 25-F required to be analysed. The workman and others were engaged in Catering Unit of Jhansi to strengthen working of the said unit. No separate establishment or unit was formed to cater requirements of the Shatabdi Express. The letter of the Chief Catering Inspectors mentions that newly appointed casual worker/cleaners, were retained in the unit and instead 14 of the senior were assigned work for Shatabdi Express. This fact remains uncontroverted. This further corroborates plea of the workman that he and others were the employees of the catering unit Jhansi and not of any separate unit in the name of Shatabdi Express unit, as pleaded by the management. In fact, the same kitchen was common. The workman and others were engaged on selection due to increased load of work. The engagement were made by the competent authority. The management has not disputed legality of the appointment grant of and temporary status to them except stating non obtaining of approval of the General Manager. Also retrenchment is justified on plea of surplusage of staff.

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written statement. "that however, subsequently due to shrinkage of work after streamlining of man power planning, it was seen that services of these casual labours including claimant were no more required as there are already excess casual labours."..... To substantiate the above statement, the management has annexed a chart indicating total strength (designation wise) at Catering Unit, Jhansi including Shatabdi Express. This chart has been classified in two parts, first part showing present total strength and the second part showing total strength at the time of retrenchment i.e. on 30-9-94. A glance over this chart, indicate present total strength 98, including 44 bearers and 18 cleaners. On the date of retrenchment i.e. 30-9-94, the strength at Catering Unit, Jhansi was 63 including 24 bearers and 10 cleaners. This chart falsifies statement in para 5 of the written statement. The strength since increased by $(98-63)=35$ at present. The number of bearers and cleaners also increased. The shrinkage of staff on man power planning is obviously an afterthought and false, particularly, when the present strength increased by more than 33% i.e. by 35, in comparison to year of the retrenchment. Even if the retrenched staff (21) is included, the total $(63+21)$ 84 is less than working 98 staff. No explanation has been given as how the workman and other were in excess when the strength in 1994 was much less than the present strength. The plea that the workman and other retrenched workmen were surplus, apparently, is contrary to the facts. The management's witness Y. K. Tripathi admitted staff strength to be more than 100 in his cross examination. There is no material to infer that the workman and other retrenched workmen were surplus, to warrant action under section 25-F. The basis of notice under section 25-F is, thus, rendered non-est, making the use of this section malicious exercise of power. This fact is also falsified by the letter of the Chief Catering Inspector, Central Railway, Jhansi dated 20-11-94, in reference to letter No. C/192/CL/117 DC dated 12/14-7-94. This letter very specifically states that 58 posts of MRCL were sanctioned, as against only 42 MRCL were working and there existed shortage of 16 MRCL. This fact was not been controverted in the written statement or in the oral statement of the Divisional Commercial Manager. Thus, it is, fully proved that dispensation of the services of the workman, on ground of non availability of work was totally unjustified and section 25-F was used as device to get rid of the workman and others. The management deliberately concealed letter No. 192/CL/117 DC dated 12/14-7-94, in reply to which the Chief Catering Inspector had clarified the position and terminated services of the workman and 20 others, whose retrenchment were under consideration.

11. In para 4 of the written statement, the management has taken plea that the engagement of the workman and others were without prior personal approval of the General Manager and so, the very appointments were illegal. A copy of the circular banning the recruitment has not been filed. However, assuming the ban on fresh engagement after 1980 the engagements, if no fraudulent may be said irregular and not illegal. This circular was administrative in nature and issued as guidelines to rationalize and regulate fresh engagements. Fresh engagements were not banned but regulated by a clog of approval of the General Manager. This conditioning in fresh engagement did not render the appointment of the workman against the sanctioned

strength illegal. The so called guidelines permitted engagement of the casual labour subject to the approval of the General Manager. This administrative measure was to prevent abuse of engaging casual labours. This must be borne in mind, that casual engagement connotes engagement without post. In the present case, the engagements were against the posts. In any event, at the time of retrenchment, the status of the workman did not remain casual on acquiring temporary status as there existed sanctioned post as stated by the Chief Catering Inspector in his letter. Such administrative instructions can not take away legal status of the workman engaged by the competent authority. The workman and others were not apprised that they were being engaged against the instructions of the Railway Board. They were selected by the competent authority by adopting due process. Taking of approval was the duty of the authorities and not of their. The workman can not be punished if no approval sought. There is no material to show that approval was sought and rejected. There is also, no material that the concerned officers involved in engagement of the workman and others were penalized by the Railway Management for having acted against the instructions of the Railway Board. The fact, is otherwise. Management's documents show that FA&CO Office, Bombay, by letter No. AC/958/E&G/CORES/II dated July 2, 1993 questioned engagement of 21 MRCL at Jhansi catering unit. Para 1 of this letter mentions letter No. E(NG)II-CL/43 dated 7-6-84 circulated under office letter No. HPV/22513/R dated 9-8-84, no fresh face, shall be engaged as casual labour, without prior approval of the General Manager, some guidelines have been issued to all DRM by your office vide letter quoted above. This irregular (not illegal) appointments of 21 MRCLs were also questioned by the Chief Personnel Officer of the Central Railway by letter No. HPB/706/RT/C. Labour date 19-8-93. Again Sr. DAO JHS letter dated 8-7-94 mentioned about irregular appointment. In concluding para of this letter 'discharge notice' to such appointees (MRCL) was desired. Management has filed office note dated 28-9-94. Mr. R.N. Srivastava, Divisional Commercial Manager (Catering) Jhansi submitted his note to Add Divisional Railway Manager/Sr. D.P.O./Sr. D.C.M. for dispensing services of 21 MRCL by issuing notice. On this note endorsements of the above authorities are given. It was decided to discharge them on the plea of there being no work and this note was approved. It appears that in view of this decision on office note, the services of the workman and 20 others were dispensed with taking assistance of Section 25-F though the fact considered were different i.e. irregular appointment without approval. It has already been observed that the Chief Catering Inspector justified their retention on plea of availability of work. The chart of strength also justify this inference. It appears that the senior authorities, to save their skin adopted this device of dispensing services of the workman and 20 others. The workman and similarly placed were made to pay for sin of authorities after wasting six years of their prime age. As observed earlier, the workman had not obtained engagement by fraud. He was selected and engaged and further derived temporary status. All employees with temporary status are governed by the Railway Servants (Discipline & Appeal) Rules. He was no longer casual worker but worker with temporary status, to be treated as temporary Railway servant. If the Railway treated their services irregular he should have been

given opportunity to explain his position. The workman was not given any opportunity to justify his engagement after acquiring temporary status. This approach was against the rule of natural justice. Even on assuming his appointment not regular, his termination should have been preceded by a show cause notice.

12 It has already been observed that the management acted in *mala fide* manner in terminating the services of the workman stating that there was no requirement. He was not given opportunity to justify his engagement. His termination in fact, was punitive though recourse to Section 25-F was adopted.

13 Let it be also debated whether Section 25-F applied at all in case of the workman? The workman claims that his retrenchment could be made under Section 25-N of the I.D. Act, 1947.

14 The contention of the management in reply, is, that catering unit, Jhansi is not an 'Industrial Establishment' within the meaning of 25 L(a)(i) of the I.D. Act, 1947, as it is not Factory under sub-section (m) of Section 2 of the Factories Act. Section 2(m) Factories Act, reads as follows.

(m) "factory" means any premises including the precincts thereof—

- (i) whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on—

But does not include a mine subject to the operation of [the Mines Act, 1952(35 of 1952)] or (a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place]

[Explanation I.—For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) in a day shall be taken into account.]

[Explanation II.—For the purposes of this clause, the mere that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.]

15. Taking advantage of exception clause, it is submitted by the management that catering unit, in railway is not an "Industrial Establishment". The exception clause mentions 'railway running shed or a hotel, a restaurant or eating place'. The catering department comprising with several working units in Central Railway has to be taken as a single establishment, for computing number of employees to be more than 100. In any event, the workman has filed list of staff at catering unit Jhansi for the year 1994 which shows the number of staff being 142. This fact is not

controverted by evidence. The Divisional Commercial Manager Mr. Y.K. Tripathi, who appeared as a witness, admitted in cross examination that number of working staff exceeded one hundred. This admission settled the controversy of number game, to bring the provision of chapter V-B in operation.

16. "The factor is as whether the activities in catering establishment in Central Railway, particularly, the working catering unit, Jhansi, may be taken as manufacturing and so may be said a factory under Section 2(m) of the Factory Act, 1948. The definition of 'factory', reproduced above, excludes railway running shed or a hotel, a restaurant or eating place. Undenably, the catering unit Jhansi is not a running shed or hotel. It is also not a restaurant in true sense. It prepares meal for the passengers in train or otherwise and serves in trains, platform and occasionally, in room marked for at on the platform. There is a common base kitchen to cater needs of the passengers, not only of Shatabdi Express but of other trains also. Evidently, catering unit Jhansi is not covered by the exclusion clause of 'factory' as defined under Section 2(m) of the factory Act, 1948."

17. Preparation of food items in base kitchen and other related activities as packaging supply in train or platform etc. are run on commercial basis. The character of such activities in base kitchen is nothing but of manufacturing. These activities in manufacturing food etc. in base kitchen are systematic and not casual.

18. Both the parties have cited case laws i.e. G.L. Hotel Limited & Others Vs. T.C. Sarin and Another (1993) 4 SCC 363, Cricket Club of India Vs. Bombay Labour Union and another (AIR 1960 SC 276, (1993) 4 SCC 363 case is related to State Insurance Act, 1948. Incidentally, the activities in kitchen lodging etc. has been discussed. Likewise, the second case Cricket Club of India Vs. Bombay Labour Union is also not directly related to activity of catering unit in railways. IW (1996) III LLJ (Suppl) 370 Madras the workman employed in canteen run by SRF Ltd. Vs. Govt. of Tamil Nadu, the Madras High Court held cooking and preparation of food for sale as manufacturing process. This observation in the above case law is material and applicable to kitchen activities of the catering units in the railways.

19. In view of above discussions, it can be safely said that the provisions of Section 25-N I.D. Act, 1947 was to be applied. If at all necessary, the workman was entitled to benefit under Section 15-N and not under Section 25-F I.D. Act, 1947. The retrenchment order under Section 25-F is thus illegal. The workman is entitled to reinstatement with full back wages and all other service benefits.

20. Accordingly, the award is that the action of the management in terminating services of the workman under Section 25-F was illegal. The workman is entitled to reinstatement with full back wages with other service benefits, assuming that there existed no termination at any point of time.

LUCKNOW

10-7-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2502.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे, झांसी के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या आई डी-50/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-41012/246/2000-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th July, 2002

S.O. 2502.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ID-No. 50/2001) of the Central Government Industrial Tribunal/Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Jhansi and their workman, which was received by the Central Government on 15-7-2002.

[No L-41012/246/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present : RUDRESH KUMAR,

Presiding Officer

I.D. No 50/2001

Ref No. L-41012/246/2000/IR (B-I) dated 19-3-2001

BETWEEN

Shiv Kumar S/o Ram Vishal R/o Vill. & Post Bhura,
Distt. Satna, Madhya Pradesh

AND

The Divisional Commercial Manager (Catering)

Central Railway, Jhansi-284001

AWARD

By order No L-41012/246/2000/IR(B-I) dated 19-3-2001, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and Section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Shiv Kumar S/o Ram Vishal R/o Vill. & Post Bhura, Distt. Satna, Madhya Pradesh, and the Divisional Commercial Manager (Catering), Central Railway, Jhansi for adjudication.

The reference under adjudication is as under :

"Whether the action of the management of Divisional Commercial Manager (Catering) in terminating the services of Shiv Kumar S/o Ram Vishal under Section 25-F of the I.D. Act, 1947 w.e.f. 30-9-1994 is justified? If not, what relief the workman is entitled to?"

2. Admitted case of the parties, is, that Shiv Kumar the workman, was engaged in Catering Unit, Jhansi, Central Railway as cleaner on 1-6-89. Initially, he was appointed as

a daily wage, alongwith 13 other casual labours, all appointed to discharge multifarious duties of cleaner/bearers and other allied works. These works had increased due to supply of food packages etc. in the Shatabdi Express. The workman along with others continuously worked for more than six years and acquired temporary status. The workman on acquiring temporary status was appointed Monthly Rated Casual Labour (MRCL) w.e.f. 29-9-89. He continued to work for about five years as MRCL, when abruptly on 30-9-94, his services were terminated with a notice under Section 25F of the I.D. Act. By the said notice the management instead of waiting for a month, paid salary and retrenchment compensation quantified Rs. 6216 only.

3. The workman, initially challenged his termination at Central Administrative Tribunal, but did not find response due to lack of jurisdiction. This dispute was taken to the High Court in a Writ Petition but the merit of the dispute was not considered, as status of the workman and legality of his termination were to be determined on the basis of evidence and so, workman was desired to raise industrial dispute. Accordingly, this industrial dispute was raised before the Asstt. Labour Commissioner (C) and on failure of conciliation, the Central Government in exercise of its powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of the I.D. Act, 1947, referred the dispute for adjudication to this tribunal.

4. As observed in foregoing para, the management admitted engagement of the workman and also grant of temporary status as MRCL w.e.f. 30-12-89 on him. However, it is pleaded that Railway Board imposed complete ban on the engagement of fresh casual labour after the year 1980, without prior personal approval of the General Manager of the Zonal Railways. The workman together with 13 other casual labours were engaged by the competent authority, without prior personal approval of the General Manager and so, it is contended that engagements were *void ab initio*, being against the rule and instructions of the Railway Board. Alternatively, it is also stated that on process of streamlining man-power under the MAN POWER PLANNING, the workman and twenty others were found surplus being in excess of requirement and so, were retrenched with legal compensation etc. under the provision of Section 25-F of the I.D. Act, 1947. The benefits envisaged under the said Section were paid to the workman and others and their retrenchment can not be questioned. It is further pleaded that since 1994, the work of Catering Unit at Jhansi is running with efficiently and without disruption which demonstrate surplusage of the workman and other retrenched workmen.

5. The reference order requires judicial scrutiny of retrenchment dated 30-9-94 purported to have been made under Section 25-F of the I.D. Act, on the basis of facts recited by the parties. The termination is mainly challenged on grounds, viz:

- (i) Malicious action under Section 25-F of the I.D. Act, 1947 using the said provision as camouflage;
- (ii) Non-compliance of Section 25-N; and
- (iii) On acquiring temporary status the workman derived status of temporary servant and was governed by the Railway Servants (Discipline & Appeal) Rules,

and his termination without adhering to the said rules and principle of natural justice being illegal.

6. Both the parties have filed oral and documentary evidence to substantiate their respective versions. The workman filed list of employees at Catering Unit, Jhansi for the year 1994 showing 142 employees at work in the said year to substantiate that Catering Unit, Jhansi was an 'Industrial Undertaking' under Section 25-K and he was entitled to protection and benefit under Section 25-N. A copy of letter No. C/102/CL/II-DC dated 28-12-92 is filed to show temporary status accorded to him and 20 other casual labours temporary status was granted to the workman w.e.f. 30-12-89. This letter further mentions approval of the Sr. Divisional Commercial Manager, Jhansi, in granting of temporary status. Copy of notice under Section 25-F of the I.D. Act, 1947 terminating his services is also filed. Medical certificate is also filed to show his health fully conforming to requirement of services in catering unit. The workman has also filed a copy of letter of the Chief Catering Inspector dated 12/14-7-94, in respect to proposal discharging of 21 Monthly Rated Casual Labours including him. In addition, the workman relied on his own affidavit. He was cross-examined by the management.

7. The management has also filed a copy of a chart indicating total strength (designation-wise) of the catering unit, Jhansi including Shatabdi Express, a copy of the FA & CAO letter dated 2-7-93, a copy of CPO (HQ) letter dated 19-8-93, a copy of letter dated 8-7-94 of the Sr. Divl. Accounts Officer/Central Railway, Jhansi, a copy of official notice dated 28-9-94 regarding disengagement of the services of workman and others, a copy of letter dated 28-9-94 by DRM regarding his disengagement and of others. The management of the Central Railway also examined Mr. Y. K. Tripathi, Divisional Commercial Manager (Catering) who was cross-examined on behalf of the workman.

Adverting to first submission that Section 25-F was applied maliciously and this provision was used as camouflage. The facts of appointment acquiring of temporary status and termination with notice under Section 25-F required to be analysed. The workman and others were engaged in Catering Unit of Jhansi to strengthen working of the said unit. No separate establishment or unit was formed to cater requirements of the Shatabdi Express. The letter of the Chief Catering Inspectors mentions that newly appointed casual worker/cleaners, were retained in the unit and instead 14 of the senior were assigned work for Shatabdi Express. This fact remains uncontroverted. This further corroborate plea of the workman that he and others were the employees of the catering Unit, Jhansi and not of any separate unit in the name of Shatabdi Express unit: as pleaded by the management. In fact, the base kitchen was common. The workman and others were engaged on selection due to increased load of work. Their engagement were made by the competent authority. The management has not disputed legality of the appointment grant of and temporary status to them except stating non-obtaining of approval of the General Manager. Also retrenchment is justified on plea of surplusage of staff.

9. In the notice of retrenchment dated 30-9-94, it is specifically mentioned,

“आपकी सेवाओं की आवश्यकता नहीं होने के कारण आपकी सेवाओं को एतद्वारा तत्काल प्रभाव से समाप्त की जाती है.....”

10. Natural meaning of the above expression is that there were surplus staff and the services of the workman and others were not needed. It is stated in para 5 of the written statement, “that however, subsequently due to shrinkage of work after streamlining of man-power planning, it was seen that services of these casual labours including claimant were no more required as there are already excess casual labours.”..... To substantiate the above statement, the management has annexed a chart indicating total strength (designation-wise) at Catering Unit, Jhansi including Shatabdi Express. This chart has been classified in two parts; first part showing present total strength and the second part showing total strength at the time of retrenchment i.e. on 30-9-94. A glance over this chart, indicate present total strength 98, including 44 bearers and 18 cleaners. On the date of retrenchment i.e. 30-9-94, the strength at Catering Unit, Jhansi was 63 including 24 bearers and 10 cleaners. This chart falsifies statement in para 5 of the written statement. The strength since increased by $(98-63) = 35$ at present. The number of bearers and cleaners also increased. The shrinkage of staff on man power planning is obviously an after thought and false, particularly, when the present strength increased by more than 33% i.e. by 35, in comparison to year of the retrenchment. Even if the retrenched staff (21) is included, the total $(63+21) = 84$ is less than working 98 staff. No explanation has been given as how the workman and other were in excess when the strength in 1994 was much less than the present strength. The plea that the workman and other retrenched workmen were surplus, apparently, is contrary to the facts. The management witness Y. K. Tripathi admitted staff strength to be more than 100 in his cross-examination. There is no material to infer that the workman and other retrenched workmen were surplus, to warrant action Section 25-F. The basis of notice under Section 25-F is, thus, rendered *non est*, making the use of this Section malicious exercise of power. This fact is also falsified by the letter of the Chief Catering Inspector, Central Railway, Jhansi dated 20-7-94, in reference to the letter No. C/192/CL/117 DC dated 12/14-7-94. This letter very specifically states that 58 posts of MRCL were sanctioned, as against only 42 MRCL were working and there existed shortage of 16 MRCL. This fact has not been controverted in the written statement or in the oral statement of the Divisional Commercial Manager. Thus, it is, fully proved that dispensation of the services of the workman, on ground of non-availability of work was totally unjustified and Section 25-F was used as device to get rid of the workman and others. The management, deliberately concealed letter No. C/192/CL/117 DC dated 12/14-7-94, in reply to which the Chief Catering Inspector had clarified the position and required services of the workman and 20 others, whose retrenchment were under consideration.

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But does not include a mine subject to the operation of [the Mines Act, 1952(35 of 1952), or (a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel), restaurant or eating place].

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16. "The factor is as whether the activities in catering establishment in Central Railway, particularly, the working catering unit, Jhansi, may be taken as manufacturing and so may be said a factory under Section 2(m) of the Factory Act, 1948. The definition of 'factory', reproduced above, excludes railway running shed or a hotel, a restaurant or eating place. Undeniably, the catering unit, Jhansi is not a running shed or hotel. It is also not a restaurant in true sense. It prepares meal for the passengers in train or otherwise and serves in trains, platform and occasionally, in room marked for it on the platform. There is a common base kitchen to cater needs of the passengers, not only of Shatabdi Express but of other trains also. Evidently, catering unit, Jhansi is not covered by the exclusion clause of 'factory' as defined under Section 2(m) of the Factory Act, 1948."

17. Preparation of food items in base kitchen and other related activities as packaging supply in train or platform etc. are run on commercial basis. The character of such activities in base kitchen is nothing but of manufacturing. These activities in manufacturing food etc. in base kitchen are systematic and not casual.

18. Both the parties have cited case laws i.e. G.L. Hotel Limited & Others Vs. T.C. Sarin and Another (1993) 4 SCC 363, Cricket Club of India Vs. Bombay Labour Union and Another (AIR 1960 SC 276), (1993) 4 SCC 363 case is related to State Insurance Act, 1948. Incidentally, the activities in kitchen lodging etc. has been discussed. Likewise, the second case Cricket Club of India Vs. Bombay Labour Union is also not directly related to activity of catering unit in railways. IW (1996) III LLJ (Suppl) 370 Madras the workman employed in canteen run by SRF Ltd. Vs. Govt. of Tamil Nadu, the Madras High Court held cooking and preparation of food for sale as manufacturing process. This observation in the above case law is material and applicable to kitchen activities of the catering units in the railways.

19. In view of above discussions, it can be safely said that the provisions of Section 25-N I.D. Act, 1947 was to be applied. If at all necessary, the workman was entitled to benefit under Section 15-N and not under Section 25-F I.D. Act, 1947. The retrenchment order under Section 25-F is thus illegal. The workman is entitled to reinstatement with full back wages and all other service benefits.

20 Accordingly, the award is that the action of the management in terminating services of the workman under Section 25-F was illegal. The workman is entitled to reinstatement with full back wages with other service benefits, assuming that there existed no termination at any point of time.

LUCKNOW

10-7-2002

RUDRESH KUMAR, Presiding Officer.

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2503.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या आई डी-631/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-12012/34/97-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th July, 2002

S.O. 2503.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ID-631/2001) of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India, Chennai and their workman, which was received by the Central Government on 15-7-2002.

[No. L-12012/34/97-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 10th July, 2002

Present : K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 631/2001

(Tamil Nadu Principal Labour Court CGID No. 10/97)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between Sri K. Ramachandran and the Management of State Bank of India, Madras.)

BETWEEN

Sri K. Ramachandran : I Party/Workman

AND

The Chief General Manager : II Party Management
State Bank of India,
Chennai.

APPEARANCE :

For the Workman : M/s. Row & Reddy,
K. M. Ramesh &
S. Satish Kumar,
Advocates

For the Management : Sri R. Krishnama-
chari, Advocate

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial dispute for adjudication vide Order No. L-12012/34/97/IR (B-I) dated 22/23-10-1997.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, where it was taken on file as C.G.I.D. No. 10/97. When the matter was pending enquiry in that Principal Labour Court, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, the case had been taken on file as I.D. No. 631/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 15-10-2001 to prosecute this case further. On receipt of notice from this Tribunal, the counsels on either side present along with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 03-05-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, documentary evidence let in on either side, the written arguments filed by the learned counsel on either side, and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of State Bank of India, Madras in dismissing Shri K. Ramachandran, Record Keeper, Pallavaram Branch with effect from 19-01-1996 is justified? If not, to what relief the workman is entitled?”

2. The averments in the Claim Statement filed by the I Parry/Workman Sri K. Ramachandran (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner Sri K. Ramachandran joined the State Bank of India, West Mambalam Branch on 10-03-75 as messenger. He worked in various branches of State Bank of India. He was promoted as Record Keeper in 1984. The II Party/Management State Bank of India, Chennai (hereinafter refers to as Respondent) suspended the Petitioner from service by an order dated 9-5-94. The Respondent/Bank issued a charge sheet dated 27-6-94 alleging that the Petitioner forged the signature of one Sri P. Balu, a savings account holder and that he fraudulently received the payments and that he received the pass-book from Mr. Balu for making entries and after some time told him that the pass-book was lost and that Sri P. Balu gave a letter to the bank for duplicate pass-book and that the Personnel Banking Manager received and marked the date on the letter and kept on his table and that the letter was missing thereafter and the Petitioner met Sri P. Vasu brother of P. Balu and admitted to him that the Petitioner had defrauded an amount of Rs. 21,800 from the account of Sri Balu and that the Petitioner gave cheque for Rs. 17,100 on Catholic Syrian Bank Ltd., Pallavaram Branch in the name of Sri P. Vasu brother of Sri P. Balu as a part payment and that cheque got returned. It was stated that the above acts of forgery, misappropriation and pilfering of records of the branch are acts prejudicial to the interest of the bank and the Petitioner was asked to submit his explanation. The

Petitioner gave a detailed explanation on 10-8-94 denying the charges. He submitted that he had filled up the withdrawal slip for Sri P. Balu as a part of customer service as he does not know English. Balu is known to the Petitioner for 20 years. For the amount of Rs. 18,000 drawn on 24-11-93 the Petitioner merely identified the party namely Sri P. Balu to the passing official as known to the Petitioner in the presence of passing official. Unfortunately, the Bank has levelled false charge against the Petitioner, as if, he forged the signature of Balu. Regarding the charge that the Petitioner admitted the guilt to Vasu brother of Balu and made part payment to the tune of Rs. 17,100 to him by cheque on Catholic Syrian Bank, Pallavaram Branch, the Petitioner submitted that it is not correct. The Petitioner gave the cheque for Rs. 17,100 to Vasu for purchasing the plot in Pammal, but the cheque got bounced. If the allegations are correct, the cheque would have been issued in the name of Sri P. Balu himself. Further, in any case, had the amount been given to Vasu for adjustment of amount alleged to have been misappropriated by the Petitioner from the account of Balu, they would have sued the Petitioner or filed a criminal case. Neither Vasu nor Balu has been examined to substantiate the allegation. The Petitioner never attempted forgery nor misappropriated any amount nor pilfered the record of the bank. The charges levelled against the Petitioner are false. Out of the five charges number 3 and 4 are held to be not proved. The bank gave a police complaint against the Petitioner and hence fearing harassment, the Petitioner was forced to remit Rs. 21,800 on 31-5-94. NO case has been registered by the police. Nowhere did the Petitioner admit the misconduct alleged by the bank. Not satisfied with the explanation, the bank conducted departmental enquiry. Though five witnesses have been examined on behalf of the bank, no one was able to give clear cut evidence to prove the charges. Unfortunately, though there was no satisfactory evidence, the Enquiry Officer submitted his findings on 7-9-95 holding charges No. 1, 2 and 5 are proved. The Disciplinary Authority asked the Petitioner to appear for a personal hearing on 20-12-95. The Petitioner appeared and gave his written submission. Ignoring all the materials on record and the admissions of PWs 1, 5 and 7, the Disciplinary Authority passed an order of dismissal on 19-1-96. The Petitioner filed an appeal on 1-3-96. He appeared before the Appellate Authority for a personal hearing on 26-3-96 and submitted his written statement. The Appellate Authority by an order dated 18-4-96 confirmed the order of the Disciplinary Authority. There is no documentary or oral evidence to show that the Petitioner had forged the signature of Balu and misappropriated the amount due to him. The enquiry Officer in his findings has stated that the forgery of signature of Balu by the Petitioner has not been proved scientifically. Further, Mr. Balu has not given any evidence, denying his signature. Mr. P. Balu had in fact subsequently, written a letter dated 31-5-94 to the Bank stating that he had given a complaint in the confused state of mind and that he himself had withdrawn the amount of Rs. 21,800.

The said letter is marked as D. Ex. 1. The Petitioner was not allowed to depose on his behalf. After realizing his mistake, Balu withdrew his complaint by a letter dated 31-5-94, marked as D. Ex. 1. That letter was not at all considered by the Enquiry Officer in his findings. The findings of the Enquiry Officer are perverse and one sided. In any case, the order of dismissal is discriminatory and excessive. The employees of the bank like Sivaramakrishnan, Raghubathi, Janardhanan who have found guilty of defrauding the bank by their acts of misconduct have been dealt with by the Respondent/Bank leniently. Therefore, the action of the Respondent/Bank is discriminatory and arbitrary and the punishment is excessive and it is disproportionate to the gravity of the misconduct. Hence, the Petitioner prays that this Hon'ble Tribunal may be pleased to interfere under section 11A of the Industrial Disputes Act, 1947 and pass an award holding that action of the Respondent/Bank in dismissing the Petitioner from service is not justified and that the Petitioner is entitled to be reinstated with back wages, continuity of service and other attendant benefits.

3. The averments in the Counter Statement of the II Party/Management, State Bank of India, Madras, (hereinafter refers to as Respondent) are briefly as follows :—

The Petitioner was proceeded for his acts of grave misconducts and found guilty in the enquiry proceedings held against him. The enquiry was initiated as one of the customers of the bank Sri P. Balu gave a complaint dated 20-4-94 stating that the Petitioner has withdrawn unauthorisedly from his S. B. account money representing his Provident Fund amount. The Petitioner participated in the enquiry and was afforded full and ample opportunity to defend. He was dismissed from bank service for the acts of proved misconduct, i.e. fraudulent withdrawal of Rs. 21,800 from the S. B. account of the bank's customer. The nature of misconduct committed by the Petitioner has resulted in loss of confidence and the punishment of dismissal is just and proper. The punishment was imposed taking into consideration, the gravity of the misconduct. The bank being a repository of the public trust and money cannot carry on its business with employees of doubtful integrity and bona fide. The bank has lost its confidence on the Petitioner and hence, he was dismissed. The Petitioner preferred an appeal to the Appellate Authority. The Appellate Authority after considering the appeal, the oral and written representations of the Petitioner, dismissed the appeal. The claim is untenable in law or on the facts and circumstances of the case. The non-examination of P. Balu and P. Vasu does not in any way belittle the misconduct committed by the Petitioner as it has been proved otherwise. If really, the Petitioner was not guilty, he need not be paid the huge amount. The Enquiry Officer has considered all the materials placed before him and after analysing the oral and documentary evidence in this case has come to the correct conclusion that the Petitioner is guilty. As

proceedings were initiated possibly, P. Balu and P. Vasu might have obliged the Petitioner by avoiding the witness box, but that does not affect the complaint of P. Balu in the letter written by P. Vasu voluntarily. Since the account holder has received the money fraudulently withdrawn from his account, he has obliged the Petitioner by not attending the enquiry. The account holder P. Balu in his complaint has clearly stated that the Petitioner has withdrawn the amount taking advantage of the pass-book with him. There is absolutely no necessity to frame a case against the Petitioner by obtaining a complaint from Mr. Balu under coercion. It is not correct to state that the Petitioner was not allowed to be examined, on the contrary, he himself avoided the witness box. D Ex 1, a letter for withdrawal of the complaint Ex. P5 was not at all received and hence, and it was rightly rejected. The punishment imposed is not discriminatory or arbitrary but proper and in keeping with the misconduct of the Petitioner. The punishment does not deserve to be changed and there is no warrant for the same. Hence, it is prayed that this Hon'ble Tribunal may be pleased to confirm the order of the Disciplinary Authority and dismiss this industrial dispute.

4. When the matter was came up for enquiry finally, no one has been examined as a witness on either side. With the consent of the counsel on either side, documents filed on either side were marked as Ex. W1 to W13 and M1 to M16. The learned counsel on either side have filed their written arguments.

5 The Point for my consideration is :—

“Whether the action of the Management of State Bank of India, Madras in dismissing Shri K. Ramachandran, Record Keeper, Pallavaram Branch with effect from 19-01-1996 is justified? If not, to what relief the workman is entitled?”

Point :—

It is admitted that the Petitioner/Workman joined the Respondent/State Bank of India, West Mambalam Branch as Messenger on 10-03-75. After he worked in various branches of State Bank of India, he was promoted as Record Keeper during the year 1984. While, he was working so in the Pallavaram Branch of the Respondent/Bank, he was suspended from bank service w.e.f. 9-5-94 for certain acts of gross misconducts reported to have been committed by him. Ex. W1 is the xerox copy of the suspension order dated 9-5-94 issued to the Petitioner/Workman by the Disciplinary Authority of the Respondent/Bank management. Thereafter, the Respondent/Bank issued a charge memo dated 27-6-94 to the Petitioner/Workman alleging that the Petitioner had forged the signature of one Sri P. Balu a Savings Bank account holder and that he fraudulently received the payments and that he received the pass-book from Sri P. Balu for making entries and after some time told him that the pass-book was lost and that P. Balu gave a letter to the bank for duplicate pass-book and that the Personnel Banking Manager received and marked the date on the letter and kept on his table and that the letter

was missing. It was further alleged that the Petitioner met P. Vasu brother of Mr. Balu and admitted to him that the Petitioner had defrauded an amount of Rs. 21,800 from the account of Mr. Balu and that the Petitioner gave cheque for Rs. 17,100 on Catholic Syrian Bank Ltd., Pallavaram Branch in the name of Sri P. Vasu, brother of Mr. Balu as a part payment and the cheque got returned and that the above acts of forgery, misappropriation and pilfering the records of the bank are acts prejudicial to the interests of the bank. The Petitioner was asked to submit his explanation. Accordingly, the Petitioner had submitted a dated explanation dated 10-08-94 and the xerox copy of the same is Ex. W4. As the Petitioner/Workman had denied the charges, the Respondent/Bank conducted a domestic enquiry. The Petitioner/Workman had participated in the domestic enquiry duly represented by defence representative. The management was represented by an official. That official who was appointed as Presenting Officer had sent a letter dated 25-03-95 to the Enquiry Officer that he intends to rely on the documents mentioned in the list and to examine the witnesses given in the list. The xerox copy of that letter is Ex. W5. He has also further stated that he has enclosed one copy of each of the documents mentioned in the list and a copy of the letter with enclosures have been forwarded to the delinquent employee for his reference. The Enquiry Officer appointed by the Disciplinary Authority has conducted the enquiry. The xerox copy of the enquiry proceedings is Ex. M2. After the enquiry, the Enquiry Officer submitted his report with his findings. The xerox copy of the report of the Enquiry Officer dated 25-8-95 is Ex. M3. The findings of the Enquiry Officer has been forwarded to the Petitioner/Workman by the Disciplinary Authority with a direction to make his submission within 15 days of the receipt of the letter. The xerox copy of that letter dated 7-9-95 is Ex. W6. The defence representative had submitted a reply dated 29-9-95 to the Disciplinary Authority as his written submissions on the findings of the Enquiry Officer in his enquiry report. The Enquiry Officer held the Petitioner guilty of the charges 1, 2 and 5. The Disciplinary Authority considered the gravity of the charges, the proceedings and findings of the Enquiry Officer in respect of the grave charges and proposed punishment of dismissal from service of the Petitioner/Workman. The Disciplinary Authority by his letter dated 11-12-95 informed the Petitioner/Workman to appear before him for the purpose of personal hearing in that matter. The xerox copy of that letter is Ex. W7. For that letter received from the disciplinary Authority, the Petitioner/Workman submitted his explanation dated 20-12-95 to the Disciplinary Authority. The xerox copy of the same is Ex. W8. The Disciplinary Authority has afforded a personal hearing. The proceedings of the personal hearing of the Disciplinary Authority conducted on 21-12-95 has been signed by the Petitioner/Workman as well as the Disciplinary Authority. The xerox copy of the same is Ex. W9. After the personal hearing, the Disciplinary Authority passed the final order dated 19-01-96. The xerox copy of the same is Ex. W10. By

that order, the Disciplinary Authority has dismissed the Petitioner/Workman from the service of the bank with immediate effect. The Petitioner/Workman has received the copy of that order of the Disciplinary Authority on 23-01-96. The Petitioner/Workman has preferred an appeal to the Appellate Authority against the order of dismissal passed by the Disciplinary Authority. The xerox copy of the appeal petition dated 01-03-96 is Ex. W11. The Appellate Authority afforded a personal hearing to the Petitioner/Workman. In that personal hearing, the Petitioner/Workman appeared with his defence representative and made his representation. The proceedings of that personal hearing dated 26-03-96 has been recorded by the Appellate Authority and the same has been signed by the Petitioner/Workman, defence representative and the Appellate Authority. The xerox copy of the same is Ex. M5. Prior to that the State Bank of India Scheduled Caste/Tribes Employees' Welfare Association General Secretary has sent a communication to the Deputy General Manager dated 15-03-96 alleging that there are some lapses in the enquiry proceedings and the bank has failed to follow the systems and procedures. The xerox copy of that letter is Ex. W12. After the personal hearing the Appellate Authority had passed an order dated 18-04-96 stating that he had no reason to interfere with the decision of the Disciplinary Authority and hence, he dismissed that appeal. The xerox copy of that order of the appellate Authority is Ex. W13.

6. From the perusal of the records, it is seen that the facts leading to the dismissal of the Petitioner/Workman from bank service has been considered by the Enquiry Officer in a detailed enquiry, wherein the Petitioner/Workman represented by his defence representative had taken part in the enquiry and had availed that opportunity full in put forth his defence effectively. It is seen that one Mr. P. Balu gave a complaint dated 20-04-1994, wherein he has stated that a sum of Rs. 21,585 being the General Provident Fund amount was credited to his account and that he gave his pass-book to the delinquent/Workman that on verification the amount has been withdrawn by the Petitioner/Workman and that action may be taken against him and his amount may be secured for him. That complaint which has been marked in domestic enquiry as Ex. P1 on the side of the Respondent/Management has been filed before this court and has been marked with the consent of the counsel for the Petitioner as Ex. M6. It is contended in the written argument of the learned counsel for the Respondent/Management that immediately after the complaint sensing some trouble, the workman approached the said Balu and gave a cheque dated 28-04-94 for Rs. 17,100 drawn on Catholic Syrian Bank, Pallavaram Branch. The cheque has been returned for want of funds. The xerox copy of the returned cheque and bank intimation have been marked in the domestic enquiry as Ex. P7 and P6 respectively and those documents have been marked here as Ex. M11 and M12 respectively. It is further contended that the cheque has been issued in the name of Sri P. Vasu brother of M. P. Balu and Sri P. Vasu has explained in his letter dated 28-04-94 marked as Ex. P8 in the domestic enquiry that the Petitioner/Workman did not owe any money to him that it was intended as repayment of the

money to Mr. Balu, that the payee's name was omitted to be noticed and in any event, as they were concerned with the recovery, they ignored the same. The said letter written by the brother of Mr. P. Balu to the Manager of the Pallavaram Branch of State Bank of India has been marked as Ex. P8 in the domestic enquiry. It has been marked here as Ex. M13. It is further contended by the learned counsel for the Respondent in the written argument that it will also be seen from Ex. P9, the letter written by Mr. P. Balu to the bank that the workman admitted his fraudulent withdrawal and misappropriation of money and that he gave a cheque and promised to pay the entire amount. That letter of Mr. Balu marked as Ex. P9 in the domestic enquiry has been marked here as Ex. M14. As contended by the learned counsel for the Respondent in his written argument, from this documentary evidence, it is seen that the workman concerned is responsible for the fraudulent withdrawal of money from the account of Mr. Balu and misappropriated the same and the fact that he has suppressed the same from the dates of withdrawal in November, December, 1993 till April, 1994 indicates his mala fide intention and conduct. It is also evident that the concerned account holder Mr. Balu has disputed about his signatures available in the withdrawal slips and on comparison it was found out that the workman is responsible for the forged withdrawal. The admitted signatures of the said account holder, Mr. Balu are in the withdrawal slips, which have been marked as Ex. M16 (series). A comparison of signatures available in Ex. M16 series with the withdrawal forms Ex. P2, P3 and P4 marked in the domestic enquiry, which have been marked here as Ex. M7 to M9, clearly show that they are all forged signatures. It is in evidence that the cashier who paid the money has stated that a sum of Rs. 18,000 was paid to the Petitioner/Workman and when he enquired about the presence of the account holder, he represented that he is sitting behind in the hall of the bank and thus, the money has been paid to the workman and the workman has received the said amount. As it is contended by the learned counsel for the Respondent in his written argument, with sufficient evidence before the Enquiry Officer, the Respondent/Management has proved the charges levelled against the Petitioner/Workman, hence the concerned workman was held to be liable for the fraudulent withdrawal of the customer's amount from his account and sufficient evidence is available in this case by way of oral and documentary to show that the misappropriated amount was recovered from the workman and later given to the account holder. As it is stated by the learned counsel for the Respondent/Management, if really the workman was not guilty of misappropriation, he would have refused to pay the amount. The said account holder Mr. Balu and Mr. Vasu have not been examined before the Enquiry Officer, that does not mean that the account holder Balu has not given the written complaint dated 20-04-94 Ex. P1 about the acts of misconduct of the Petitioner and his brother P. Vasu has not given his letter Ex. P8 dated 28-4-94 voluntarily, but they have been obtained from them under coercion. For that contention of the Petitioner, there is no evidence as basis. It is seen from the letter written by P. Balu to the bank marked as exhibit in the proceedings that the workman admitted his fraudulent withdrawal and misappropriation of money and that he gave a cheque and promised to pay the entire amount. Thus, it will be evident from the conduct of the Petitioner that he is responsible

for fraudulent withdrawal amount of money from the account of Mr. P. Balu and misappropriation thereof. Further, as contended by the learned counsel for the Respondent/Bank, the fact that he suppressed the same from the dates of withdrawal in November, December, 1993 till April, 1994 indicates his mala fide and conduct. Further, the money having been paid to the Petitioner and received by him has been proved by acceptable evidence before the Enquiry Officer, the misappropriated amount was recovered from the Petitioner and later given to the account holder. If really, the Petitioner was not guilty of misappropriation, he would have refused to pay the amount. The perusal of the entire materials and evidence available in this case clearly shows that the Enquiry Officer has come to a correct conclusion while giving his findings by properly analysing the entire oral and documentary evidence. Even for the contention of the Petitioner, that he was not permitted to let in evidence on his behalf, there is no record as basis. He has not even chosen to let in evidence on his behalf before this Tribunal also. The alleged letter said to have been given by the account holder Sri P. Balu for the withdrawal of his complaint given earlier also has not been proved by examining him, as the author of that letter. It is the contention of the learned counsel for the Respondent/Management that the management could not examine the account holder Sri P. Balu and his Brother P. Vasu, as they have been dissuaded from giving evidence by the workman. In the facts and circumstances of this case, the said contention of the learned counsel for the Respondent/Management can be accepted as believable. Further, as contended by the learned counsel for the Respondent/Management that they were indifferent in coming before the Enquiry Officer since they have received the money. Therefore, the non-examination of the account holder P. Balu and his brother Sri P. Vasu before the Enquiry Officer by the Respondent/Management will not in any way affect the findings of the Enquiry Officer, since the guilt of the delinquent employee was established before him by ample, reliable and unimpeachable documentary evidence by the Respondent/Management. The Enquiry Officer has held in his report that notwithstanding the fact that the withdrawal slips were not sent to the opinion of the forensic experts, the factum of forged withdrawals have been proved. The strong probabilities indicate that the workman is guilty. A perusal of the entire proceedings before the Enquiry Officer and the Disciplinary Authority and the connected records clearly establish that the Petitioner, as delinquent employee, has been given fair and ample opportunity to put forth his defence effectively and the Petitioner along with his defence representative has availed that opportunity in full. On the basis of the findings given by the Enquiry Officer that out of the five charges, three charges have been proved, the Disciplinary Authority taking into account the gravity of the charges i.e. fraudulent withdrawal on the foot of forged slips has imposed the punishment of dismissal from service after affording a personal hearing to the Petitioner to make his representation about the Enquiry Officer's report and findings. The Appellate Authority also, after considering the appeal and representation made by the Petitioner both orally and by written representation, had dismissed the appeal holding that there is no merit in this case. As contended by the learned counsel for the Respondent/

Bank, the bank has lost its confidence on the Petitioner, since it cannot carry on its business with the employee like the Petitioner of doubtful integrity and bonafide and the bank being a repository of the public trust and money and hence, the Respondent/Bank management has dismissed the Petitioner from service. The learned counsel for the Respondent/Bank has relied upon a judgement of the Supreme Court reported as 1997(1) SCC 299 NARAYAN DATTATRAYA RAMTEERTHAKHAR Vs. STATE OF MAHARASHTRA AND OTHERS, wherein the Supreme Court has held that "*the Petitioner has committed misappropriation of the public money and his removal from service is an appropriate order.*" The Supreme Court in a case reported as 1998(3) LLN 89 UNION BANK OF INDIA Vs. VISHWAMOHAN that "*In banking business, absolute devotion, diligence and integrity need to be preserved by every bank employee, and in particular, by bank officer. If this is not observed, confidence of depositors would be impaired. Hence, the order of dismissal of the employee from service by the bank management is confirmed.*" These decisions of the Supreme Court cited above are squarely applicable to the facts of the present case. Under such circumstances, it can be held that the dismissal of the concerned workman from service by the Respondent/Bank management w.e.f. 19-01-96 is justified. Hence, the concerned workman is not entitled for any relief. Thus, the point is answered accordingly.

7. In the result, an Award is passed holding that the concerned workman Sri K. Ramachandran is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 10th July 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Exhibits Marked :—

For the I Party/Workman :—

Ex. No.	Date	Description
W1	09-05-94	Xerox copy of the suspension order issued to Petitioner.
W2	24-06-94	Xerox copy of the internal correspondence.
W3	27-06-94	Xerox copy of the charge memo.
W4	10-08-94	Xerox copy of the explanation of the Petitioner to the charge memo.
W5	25-03-95	Xerox copy of the letter from Management to Enquiry Officer.
W6	07-09-95	Xerox copy of the letter of Disciplinary Authority to Assistant Manager, State Bank of India, Perambalur enclosing copy of findings of Enquiry Officer.

W7	11-12-95	Xerox copy of the letter from Disciplinary Authority to Petitioner directing him to appear for personal hearing.	M13	28-04-94	Original Letter of Sri Vasu to Management.
			M14	Nil	Original letter of Sri P. Balu to Management.
W8	20-12-95	Xerox copy of the reply of the Petitioner to 2nd show cause notice to Disciplinary Authority.	M15	Nil	Original extract of Ledger No. 34 A/c. No 9653 under Segment P of Perumal Balu.
W9	21-12-95	Xerox copy of the proceedings of personal hearing.	M16 series (3)	Nil	Original S B withdrawal forms of Sri P Balu.
W10	19-01-96	Xerox copy of the order of dismissal of Petitioner			
W11	01-03-96	Xerox copy of the letter from the Petitioner to the Appellate Authority.			
W12	15-03-96	Xerox copy of the letter from State Bank of India SC/ST Welfare Association to the Deputy General Manager.			
W13	18-04-96	Xerox copy of the order of Appellate Authority.			

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2504.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांड्या ग्रामा बैंक विरुदुनगर के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या आई डी-256/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-7-2002 को प्राप्त हुआ था।

[सं. एल-12011/21/99-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

For the II Party/Management :—

Ex. No	Date	Description
M1	12-09-94	Xerox copy of the reply of the Petitioner to Charge Sheet dated 27-6-94
M2	Nil	Xerox copy of the enquiry proceedings.
M3	25-08-95	Xerox copy of the report of Enquiry Officer.
M4	29-09-95	Xerox copy of the letter of defence representative of the Petitioner to Disciplinary Authority.
M5	26-03-96	Xerox copy of the proceedings of personal hearing offered by Appellate Authority.
M6	20-04-94	Original letter from Sri P. Balu to the Management.
M7	24-11-93	Original S. B. withdrawal slip of Sri Balu for Rs. 18,000.
M8	07-12-93	Original S. B. withdrawal slip of Sri Balu for Rs. 3,300.
M9	10-12-93	Original S. B. withdrawal slip of Sri Balu for Rs. 500.
M10	Nil	Original letter of Sri P. Balu to the management requesting for issuance of duplicate pass book.
M11	28-04-94	Cheque return memo from the Catholic Syrian Bank Ltd. Pallavaram to State Bank of India, Pallavaram.
M12	28-04-94	Cheque No. 102635 for Rs. 17,100

New Delhi. the 16th July. 2002

S.O. 2504.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ID-256/2001) of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank, Virudunagar and their workman, which was received by the Central Government on 15-7-2002.

[No. L-12011/21/99-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 24th June, 2002

Present : K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 256/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 288/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the workmen and the Management of Pandyan Grama Bank, Virudunagar.)

BETWEEN

The General Secretary : I Party/Claimant
Pandyan Grama Bank
Employees Association,
Virudunagar.

AND

The Chairman : II Party/
Pandyan Grama Bank. Management
Virudunagar.

APPEARANCE :

For the Claimant	: M/s P. V. S. Giridhar & Rajeni Ramadass Advocates
For the Management	: M/s. N. G. R. Prasad & Sri S. Vaidyanathan, Advocates.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-12011/21/99/IR (B-1) dated 08-10-99/12-10-99.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai, where the same was taken on file as I.D. No. 288/99. When the matter was pending enquiry in that Tribunal, Govt. of India, Ministry of Labour was pleased to order transfer of this case also from the file of Tamil Nadu State Industrial Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, this case has been taken on file as I.D. No. 256/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 09-02-2001 with their respective parties and to prosecute this case further. Accordingly the learned counsel on either side along with their respective parties have appeared and prosecuted this case further.

When the matter came up before me for final hearing on 23-05-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, documentary evidence let in on either side, after hearing the arguments advanced by the learned counsel on either side, and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Pandyan Grama Bank, Virudunagar in not extending the benefit of payment of wages to the daily contingent paid voucher employees (sweeper/sweeperesses) is justified and legal? If not, to what relief the daily contingent paid voucher employees are entitled to?”

2. The averments in the Claim Statement filed by the 1 Party/Claimant Union (hereinafter refers to as Petitioner) are briefly as follows :—

The Assistant General Secretary of Pandyan Grama Bank Employees Association has raised this industrial dispute espousing the cause of the daily contingent paid voucher employees of the Respondent/Pandyan Grama Bank. In all the branches of the Respondent/Bank, they are extracting services such as sweeping, cleaning and water carrying from the workmen sweepers/messengers. They are being paid the consolidated pay of Rs. 50, Rs. 75 or Rs. 100

on monthly basis without any uniformity. This consolidated pay was paid through voucher. The workmen are being paid a minimum bonus of Rs. 100 annually. Two Writ Petitions were filed by the Regional Rural Bank Employees Association before the Supreme Court seeking parity in respect of pay, salary, allowances and other benefits with the employees of Nationalised Bank in corresponding or comparable posts. The Supreme Court suggested that reference of the dispute may be made by the Government of India to a National Industrial Tribunal. Accordingly, the National Industrial Tribunal was constituted and it pronounced its Award on 30-04-90. The Tribunal in its Award, inter alia, held that as regards equation of posts and consequent fixation of pay, allowances and other benefits, the Government of India may decide the same in consultation with such authorities as it may consider necessary. Therefore the Government of India appointed an Equation Committee on 5-10-90 which submitted its report dated 8-1-91 on 16-01-91 before the Government of India. The Government of India through its circular dated 19-2-91 vide NABARD order accepted the National Tribunal Award and the recommendation of the Equation Committee. According to the Equation Committee's report, the Chairman of each RRB be asked to ascertain the position of part-time employees, regarding their hours of work and equate them with part of full time employees of the concerned sponsor banks in subordinate cadre engaged for the same hours of work. Even after the aforesaid NABARD order dated 19-02-91, the Respondent/Bank failed to equate the part-time sweepers of RRBs with the part-time sweepers of the sponsor banks as per the system prevailing in respect of subordinate cadre in the latter's bank. The Chairman of some of the RRBs pointed out that the part-time messengers-cum-sweepers of their rural branches who were entrusted with the duty of opening and closing of the branch premises were working part-time only. In view of this position, they felt that the part-time messenger-cum-sweepers need not be paid full wages. The Association's representatives maintained that the part-time sweepers were in fact, utilised not only as regular full time messengers-cum-sweepers but also beyond office hours and hence they should be paid full wages as directed by the Tribunal. In view of the divergent views placed before it and also in the absence of the requisite details to prove either way, the Committee recommends that the Chairman of each RRBs may be asked to ascertain the position of part-time employees regarding their hours of work and equate them with part of full time employees of the concerned sponsor banks in subordinate cadre engaged for the same hours of work. The failure of the Respondent to equate the part-time sweeper of their bank those of the concerned sponsor bank (Indian Overseas Bank) is violative of their rights under Articles 14 and 16 of the Constitution. The failure of the Respondent to implement the aforesaid order of NABARD is arbitrary, unreasonable and illegal. Being a statutory body with substantial Government control and funding, the Respondent

is bound by Part III of the Constitution. As the Respondent failed to implement the aforesaid order of the NABARD, the Petitioner Union filed a petition on behalf of the workmen before the Assistant Labour Commissioner, Madurai for which the Respondent filed their reply on 21-2-98. The Assistant Labour Commissioner submitted his conciliation failure report. Thereafter, the Government of India have referred this matter as an industrial dispute to this Tribunal for adjudication. It is therefore, prayed that this Hon'ble Tribunal may be pleased to direct the Respondent to pay part-time sweepers of the Respondent/Bank by equating them with the sweepers in the sponsor bank viz. Indian Overseas Bank together with all consequential benefits and perquisites including payment of arrears w.e.f. 19-02-91.

3 The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank, Virudhunagar (hereinafter refers to as Respondent) are briefly as follows :—

The II Party/Management Pandyan Grama Bank submits that there is no part-time sweeper/messenger appointed in their bank. All the branches are provided with regular messengers/messenger-cum-sweepers. The Respondent deny payment of any consolidated pay to any part-time sweeper/messenger. In the branches of the Respondent/Bank for purchase of drinking water, the cost of drinking water is reimbursed by the manager on monthly basis. Where there is a regular messenger-cum-sweeper posted in the branch, there he would perform both messenger and sweeper duties and no need for separate sweeper. Government of India have accepted the NIT award and recommendations of the Equation Committee with certain modification, alteration. As per the instructions of Government of India, NABARD has sent a circular dated 20-03-93 enclosing a copy of the report of the working group on RRBs relating to issues arising out of implementation of NIT Award/Equation Committee recommendation. In this circular, it is clarified that in respect of RRBs which as appointed sweepers on contract basis or manual labour on job basis of floor area basis and paid/paying them through contingencies, such sweepers do not part of the RRBs. The question of comparison of their payments with that of the sponsor banks does not arise. In the Respondent/Bank no sweeper is appointed. Even if, it is assumed that there are sweepers in our bank the above instruction clearly says that there is no question of comparison of their payments with that of sponsor bank. The exerts of the Equation Committee in para 5 of the Claim Statement is only the recommendation of the Equation Committee which is not accepted by the Government of India. As far as para 2.7.12 to 2.7.14 of the Equation Committee recommendations all the temporary messenger-cum-sweepers were regularised equating their scale of sponsor bank already. There is no part-time sweeper appointed in our bank and hence the question of equating them with the Sponsor Banks' part-time sweepers does not arise. The Respondent/

Bank has already implemented the NABARD's order dated 20-03-93. Though the Claim Statement is silent about water carriers, who supply water to the bank, the bank presumes that the claim relates to the water carriers and whose dispute has not been referred for adjudication. Without prejudice, the Respondent submits that the said persons were not appointed by the bank and they do not form part of either regular or part-time employees. There is no service agreement of contract with the bank. The Petitioner raised a dispute vide letter dated 20-04-98 regarding non-payment of Provident Fund in respect of the persons for whom this dispute is raised. The RPFC, Madurai by an elaborate order dated 10-9-99 has held that they are not employees of the bank for the purpose of EPF Act, 1952. The reasoning given by the EPF Authority may be read as part and parcel of this Counter and the same may be treated at bank's contention in respect of the ID. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the claim of the Petitioner.

4. When the matter was taken up for enquiry, no one has been examined on either side as a witness. The documents filed on either side have been marked as Ex. W1 and W2 and M1 and M3 respectively. The learned counsel on either side have advanced their respective arguments.

5 The point for my consideration is :—

“Whether the action of the management of Pandyan Grama Bank, Virudhunagar in not extending the benefit of payment of wages to the daily contingent paid voucher employees (sweepers/sweeperesses) is justified and legal? If not, to what relief the daily contingent paid voucher employees are entitled to?”

Point :—

This industrial dispute has been raised by the General Secretary of Pandyan Grama Bank Employees Association, Tamil Nadu in respect of the action of the Respondent/Pandyan Grama Bank Management, Virudhunagar in not extending the benefit of payment of wages to the daily contingent paid voucher employees (Sweepers/Sweeperesses) as per the schedule of reference of this industrial dispute. In the said reference, the number of such employees and their names and their nature of work and their place of work has not been mentioned by way of any annexure to that reference. In the Claim Statement filed by the Petitioner Union, it is stated that the Petitioner has raised the industrial dispute in question in respect of daily contingent paid voucher employees (part-time sweepers/messengers). But it is not in consonance with employees concerned with the referred industrial dispute in the Schedule of Reference. In para 2 of the Claim Statement, it is stated that in all the branches of the bank, the services such as Sweeping, cleaning and water carrying from the workman (Sweepers/Messengers) has been extracted and those workman are being paid the consolidated pay of Rs. 50, Rs. 75 or Rs. 100/- on monthly basis without any uniformity. When it was brought to the notice of the counsel on either side that the schedule of

reference does not say, the names of the persons who claim such benefits under total number in that category, the Petitioner Union had submitted a memo with an annexure of the list of persons who seek refund under the reference mentioned industrial dispute stating they are contingent paid voucher employees for the Respondent/Bank in different branches. The list contained the name of the sweeper, the branch at which he/she is working, age, years of service and wage obtained per month. According to that list, they are 159 in number. For that memo, the Respondent/Management has filed a reply stating that the Respondent/Bank has not engaged any such contingent paid voucher employees as Sweepers as mentioned in the annexure to the memo filed by the Petitioner. It is their specific stand that only water carriers were engaged as contingent paid staff on voucher basis and the water carrier is not required to come to the bank and he could depute any one on his behalf as some of his family member like wife, daughter, son or any close relatives and the said water carriers are not appointed by the bank and they do not form part of either regular or part time employees of the bank and there is no service agreement or contract with the bank and the persons mentioned in the annexure to the memo filed by the Petitioner were not sweepers because the bank only engages full time sweepers. Contrary to this reply memo, no document worth considered or no reliable oral or documentary evidence has let in by the Petitioner Union in this case. It is mentioned in the Claim Statement that the concerned workmen, who are doing the work of sweeping, cleaning and water carrying as sweepers/messengers are being paid the consolidated pay of Rs. 50, Rs. 75 or Rs. 100 on monthly basis without any uniformity and the consolidated pay was paid through voucher. In support of this plea, no document has been filed by the Petitioner Union in this case and none of such workmen have been examined as a witness on their evidence, to give evidence on this aspect. On the other hand, it is mentioned in the annexure 5 to the memo filed by them as the list of persons employed by the Respondent/Bank as contingent paid voucher employees are doing the work of sweeper. The wages said to have been given by the Respondent/Bank ranging from Rs. 70 as the lowest payment and Rs. 300 as the highest. In that list, it is stated under serial number 149 one Saraswathy working as Sweeper in A. Siruvayal branch aged 50, has put in a service of 15 years, is drawing a monthly wages of Rs. 70 and under serial number 130, one Packyalakshmi working as a Sweeper in Tiruthangal branch aged 35, who has put in service of 2 years, is drawing wages of Rs. 300. It is also mentioned in that list that under serial number 89 one Madathi employed in the Puliangudi branch aged 55 years, for 23 years for the wages Rs. 120 and under serial number 132 one by name Karupayee employed as a sweeper in Tiruvadanai aged 55, has put in a service of 22 years is obtaining wage of Rs. 125. Though in the reply memo filed by the Respondent/Management, a specific denial has been mentioned that these people have not engaged by the Respondent/

Management in their respective branches as Sweepers/Sweeperesses as mentioned in the annexure, no attempt has been made by the Petitioner/Union to prove their stand by adducing acceptable, legal oral or documentary evidence.

6. It is the specific stand taken by the Respondent/Bank in their Counter Statement that there is no part-time sweeper/messenger appointed in their bank and all their branches are provided with regular messengers/messenger cum sweepers and the Respondent has denied payment of any consolidated pay to any part-time sweepers/messengers and it is further contended that where there is a regular messenger cum sweeper post is posted in the branch, there he would perform both messenger and sweeper duty and no need for separate sweeper. It is further contended in the Counter Statement that no sweeper is appointed in the Respondent/Bank. It is also the contention of the Respondent/Bank that there is no part-time sweeper appointed in their bank and hence, the question of equating them to the Sponsor Banks' part-time sweepers does not arise. It is admitted by both the parties that National Industrial Tribunal passed an Award on 30-04-90 and as per that Award, the Government of India appointed an Equation Committee on 5-10-90 which submitted its report dated 8-1-91 to the Government of India and the Government of India through its circular vide NABARD order dated 19-02-91 accepted the National Industrial Tribunal Award and the recommendation of the Equation Committee. It is the contention of the Petitioner Union that even after the aforesaid NABARD order, the Respondent/Bank failed to equate the part-time sweepers of RRBs with the part-time sweepers of the Sponsor Banks, as per the system prevailing in respect of subordinate cadres in the Sponsor Banks. It is the further contention of the Petitioner Union that in the Equation Committee report, it is stated under para 2.7.14 that the Committee recommends that the Chairman of each RRB be asked to ascertain the position of part-time employees regarding their hours of work and equate them with part or full time employees of the concerned Sponsor Banks in subordinate cadre engaged for the same hours of work and that the failure of the Respondent to equate the part-time sweepers of their banks with those of the concerned Sponsor Banks (Indian Overseas Bank) is violative of the rights under Article 14 and 16 of the Constitution and that the failure of the Respondent to implement the aforesaid order of NABARD is arbitrary, unreasonable and illegal. For that it is alleged in the Counter Statement of the Respondent that the exerts of the Equation Committee in para 5 of the Claim Statement is only the recommendation of the Equation Committee, which is not accepted by the Government of India. This plea of the Respondent/Bank has not been denied as incorrect by the Petitioner Union. The xerox copy of the Circular issued by NABARD dated 19-2-91 has been marked as Ex. M1. It is the specific contention of the Respondent in their Counter Statement that as far as para 2.7.12 to 2.7.14 of Equation Committee recommendations all the temporary sweepers/messengers were regularised equating their scale of sponsor banks already. This specific contention has not been denied by the Petitioner Union as false and contra evidence has also let in by the Petitioner Union to disprove that contention. Further, it is the specific stand of the Respondent/Bank in their Counter Statement that there is no part-time sweepers

appointed in their banks and hence the question of equating them with the sponsor bank part-time sweepers does not arise. This contention also has not been denied or disputed by the Petitioner Union or proved is false by acceptable evidence. Further, it is stated in the Counter Statement of the Respondent that as per the instructions of Government of India, NABARD has sent a circular dated 20-03-93 enclosing a copy of the report of the Working Group on RRBs relating to issues arising out of implementation of National Industrial Tribunal Award/Equation Committee Recommendation. The xerox copy of the circular has been marked as Ex. M2. It is further averred in the Counter Statement that in this circular it is clarified that in respect of RRBs which has appointed sweepers on contract basis or manual labourer or job basis or floor area basis are paid/paying them through contingencies, such sweepers do not form part of RRB personnel as such. Since they do not form part of RRBs the question of comparison of their payments with that of sponsor banks does not arise. A perusal of Ex. M2 clearly shows what that is pleaded in the Counter Statement in this regard is correct. So as per that instruction in the circular under Ex. M2, there is no comparison of their payments with that of sponsor banks. Further, the learned counsel for the Respondent would argue that the Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Madurai has passed an order dated 10.9.99 stating that after having gone through the averments made on behalf of establishment, M/s. Pandyan Grama Bank, Virudhunagar, and by the Labour Enforcement Officer on behalf of the department, that the water carriers bringing water to the various branches of the bank, who are not appointed by the bank and that water carriers are contract for service and not contract of service and the amount paid only for water charges and not for wages for water carriers and the bankers has not controlled the method of work and has not the power to take disciplinary action against the water carrier, they are not employees of the bank for the purpose of Employees Provident Fund and hence even if they taken to be water carriers, they cannot be treated as bank's employees. This contention of the learned counsel for the Respondent/Bank has not been opposed as incorrect by any acceptable argument by the learned counsel for the Petitioner Union in his argument. Ex. W1 is the xerox copy of the circular issued by the NABARD which is marked as Ex. M1 also. Ex. W2 is the xerox copy of the extracts of Equation Committee Report, which has been extracted in the Claim Statement. So, from all these things, it is seen that the Petitioner Union has not come forward with clear case supported by acceptable evidence to prove that the action of the management of Pandyan Grama Bank, Virudhunagar, in not extending the benefit of payment of wages to the daily contingent paid voucher employees (Sweepers/Sweeperesses) as an unjustified action. Though the industrial disputes refers to in the Schedule of Reference in respect of not extending the benefit of payment of wages to the daily contingent paid voucher employees by the Pandyan Grama Bank management in the Claim Statement the Petitioner Union has prayed a relief to be granted by this Tribunal by directing the Respondent/Bank to pay part-time sweepers of the Respondent/Bank by equating them with Sweepers in the sponsor banks i.e. Indian Overseas Bank together with all consequential benefits and perquisites including payment

of arrears with effect from 19.2.91, which is quite inconsistent to the dispute raised by the Petitioner Union as an unjustified action of the Respondent/Bank against the daily contingent paid voucher employees. So, under such circumstances, it cannot be said that the Respondent/Bank Management has committed any illegality or taken any unjustified action in not extending the benefit of payment of wages to the daily contingent paid voucher employees (Sweepers/Sweeperesses) when the Respondent/Bank has stated that they have only regular messenger cum sweeper posted in the branch and they have not paid any consolidated pay to any part-time sweepers/messengers as there is no part-time sweepers/messenger appointed in their bank but all the branches are provided with regular messenger/messenger cum sweepers. Thus, the point is answered accordingly.

7. In the result, an Award is passed holding that the relief prayed for by the Petitioner Union in their Claim Statement on behalf of the alleged part-time sweepers in the Respondent/Bank cannot be granted. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 24th June, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witness Examined :

On either side None

Exhibits marked :

For the I Party/Workman :

Ex. No.	Date	Description
W1	19-02-91	Xerox copy of the circular of NABARD to the Chariman All Sponsor Banks and All Regional Rural Banks with Regard to National Industrial Tribunal for RRBs Equation Committee Report.
W2	Nil	Extract of Equation Committee Report.

For the II Party/Management :—

Ex. No.	Date	Description
M1	19-02-91	Xerox copy of the circular of NABARD to the Chariman All Sponsor Banks and All Regional Rural Banks with Regard to National Industrial Tribunal for RRBs Equation Committee Report.
M2	20-03-93	Xerox copy of the circular of NABARD to the Chariman & Managing Director. All Sponsor Banks and the Chairman, All RRBs with regard to National Industrial Tribunal for RRBs Equation Committee Report.
M3	10-09-99	Xerox copy of the order of EPF organisation, Sub Regional Office, Madurai.

नई दिल्ली, 17 जुलाई, 2002

का.आ. 2505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक, नागपुर के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या सी. जी. आई. टी. 231/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2002 को प्राप्त हुआ था।

[सं. एल-12012/113/2000-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th July, 2002

S.O. 2505.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT : 231/2000) of the Central Government Industrial Tribunal, Nagpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India, Nagpur and their workman, which was received by the Central Government on 16-07-2002.

[No. L-12012/113/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT SHRI B. G. SAXENA, PRESIDING OFFICER

REFERENCE NO. CGIT : 231/2000

THE REGIONAL MANAGER, STATE BANK OF INDIA

AND

SMT. ASHA W/O LATE HARPAL MEHERE

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute for adjudication vide order No. L-12012/113/2000/IR (B-I) dt. 03/16-08-2000 on following schedule.

SCHEDULE

“Whether the action of Management of State Bank of India through its Regional Manager, Region-VI, Nagpur in dismissing Shri Harpal Mehre “Agricultural Assistant” w.e.f. 23-08-89 (the said workman being died on 18-01-98) and in not considering the prayer of the said deceased workman for payment of back wages till death of the deceased consequence upon acquittal in Cr. Case No. 73/89 by the Hon’ble C.J.M. Wardha on 30-04-98 on merit; is lawful & justified ? If not, to what relief the dependents of deceased workman are entitled ?”

In this reference the Statement of Claim has been submitted by Smt. Asha W/o Late Harpal Mehre who was working as Agriculture Assistant in State Bank of India. Harpal Mehre was charge sheeted for misconduct on 04-10-87. In the chargesheet 12 charges were framed

against him. The charges were for remaining absent without intimation, insubordination and committing financial irregularities in his official duties. B.N. Tiwari Enquiry Officer conducted the enquiry and in the 8th sittings he concluded the enquiry. Show cause notice was given to Harpal Mehre on 29-12-88. He filed appeal against the enquiry report and the appellate authority dismissed his appeal. From 23-08-89, Harpal Mehre was dismissed from the service. The Appellate Authority Deputy General Manager also confirmed his dismissal vide order dt. 24-04-90.

Harpal Mehre filed Writ Petition No. 3183 in 1991 before High Court Bench of Mumbai at Nagpur against his dismissal but the Hon’ble High Court dismissed the above Writ Petition. The copy of the Writ Petition clearly shows that Harpal Mehre had moved the High Court that his dismissal order was illegal, the enquiry was not conducted according to the principles of natural justice. He had also claimed his reinstatement in service.

It is admitted to both the parties that above Writ Petition was dismissed by the Hon’ble High Court.

Smt. Asha had mentioned in Statement of Claim that her husband alongwith three other persons was facing trial in the Court of Chief Judicial Magistrate, Wardha. During the pendency of the trial before the Magistrate, Shri Harpal Mehre died on 18-01-98. The other accused in this case namely Shyamsunder, Radheshyam and Ghaneshyam were acquitted of the charges under sections 468, 409 & 420 read with Section 34 of the Indian Penal Code.

Smt. Asha has claimed that because other accused were acquitted in this case bearing No. 73/1988 by Chief Judicial Magistrate on 30-04-98, her husband should be reinstated in service and backwages be paid to her from the date of dismissal of her husband from service w.e.f. 23-08-89 till the death of her husband i.e. 18-01-98

The management of State Bank of India contested the case and stated that the Writ Petition No. 3183/91 through which the dismissal order was challenged, has been dismissed by the Hon’ble High Court and no appeal was filed against the order of the High Court, hence the reference can not be entertained. The deceased did not prefer to raise the dispute for more than 9 years, hence the delay for raising the dispute remains unexplained.

In the criminal case before the Chief Judicial Magistrate the deceased Harpal Mehre did not stand trial the proceedings were dropped against him due to his death on 18-01-98 when the proceedings of criminal case were in progress Harpal Mehre was not acquitted in the above criminal case.

Both the parties have submitted documents. Smt. Asha also filed her affidavit in this Court but she did not turn up for cross-examination. The affidavit was filed by Smt. Asha in this Court on 10-09-01. The case was adjourned to 23-10-01 for her cross-examination. The case was again adjourned to 19-12-01. On 19-12-01 Smt. Asha did not prefer to get herself cross-examined by the counsel for the bank. She represented that her counsel has not come so another date be given to her for cross-examination. On this date she was informed that if she will not

stand cross-examination on the next date, her evidence will be closed. The case was adjourned to 05-02-02. On this date i.e. 05-02-02 Smt. Asha did not turn up for cross-examination. Her counsel also did not prefer to appear in the Court and to represent her. The management did not produce any oral evidence. The case was therefore fixed for arguments. On 17-04-02 again Smt. Asha did not turn up and her counsel did not turn up to argue the case. The case was adjourned to 12-06-02 for oral arguments.

On 12-06-02 neither Smt. Asha appeared nor her counsel appeared to represent her. The counsel for the bank argued the case.

I have considered the entire documentary evidence on record and the arguments of the counsel for management.

It is admitted to both the parties that Harpal Mehre had filed Writ Petition No. 3183/91 before High Court Bench at Nagpur and had challenged the dismissal order dt. 23-08-89. He had also claimed reinstatement in service. The petitioner Harpal Mehre had mentioned in the petition that the order passed by the management of State Bank of India was in violation of principle of natural justice by denying reasonable opportunity to him and thus the order for dismissal is illegal.

In affidavit dt. 10-09-01 Smt. Asha has also mentioned that her husband had filed Writ Petition No. 3183/91. She had mentioned that the decision of the Writ Petition of the Hon'ble High Court would be of no consequence nor would be same have any effect on the present proceedings. It is therefore clear that it is admitted to Smt. Asha that her husband could not get the relief of reinstatement in service from the Hon'ble High Court.

In view of the above fact the proceedings in this case on the same ground on which the Writ Petition was filed, can not be entertained.

Moreover Harpal Mehre was not acquitted in the criminal case No. 73/1989 by the Chief Judicial Magistrate. The proceedings against Harpal Mehre were dropped as he had died on 18-01-98. The judgement dt. 30-04-98 shows that remaining three accused Shyamsunder, Radheshyam and Ghaneshyam were acquitted by the Chief Judicial Magistrate.

In the above circumstances no presumption can be drawn regarding the acquittal of Harpal Mehre. In the criminal cases the acquittal of one accused does not mean the acquittal of other accused. Each accused has a right to put his defence separately. In the above circumstances Smt. Asha is not entitled to claim any benefit from the acquitted order of Chief Judicial Magistrate, Wardha dt. 30-04-98.

In a criminal case the offender is punished and his legal heirs are not impleaded as a party after the death of the offender. The legal heirs or the dependents of the deceased have no concern with the trial of the criminal case or its result.

Moreover departmental proceedings are totally different than criminal proceedings. An employee can be punished and dismissed from service for the misconduct on the basis of the departmental enquiry even after his acquittal in criminal case.

In the present reference the deceased Harpal did not stand full trial in the Court of Magistrate and the proceedings were dropped against him due to his death on 18-01-98. Smt. Asha, the wife of the deceased Harpal is therefore not entitled to any relief claimed by her.

ORDER

Smt. Asha W/o Late Harpal Mehre is not entitled to any relief claimed by her in her Statement of Claim. The deceased Harpal can not be reinstated in service as he has already died on 18-01-98. No back wages can be paid to the dependents of the deceased.

The reference is answered accordingly.

Date: 19-6-02

B. G. SAXENA, Presiding Officer

नई दिल्ली, 17 जुलाई, 2002

का.आ. 2506.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक, नागपुर के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या सी. जी. आई. टी. 2/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-07-2002 को प्राप्त हुआ था।

[सं. एल-12012/273/2001-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th July, 2002

S.O. 2506.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT : 02/2002) of the Central Government Industrial Tribunal, Nagpur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India, Nagpur and their workman, which was received by the Central Government on 16-07-2002

[No. L-12012/273/2001-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT SHRI B. G. SAXENA, PRESIDING OFFICER

REFERENCE NO. CGIT : 02/2002

THE ASSTT. GENERAL MANAGER, S.B.I.

AND

SHRI S.T. GULGULWAR, ASSTT. GENERAL
SECRETARY

AWARD

The Central Government, Ministry of Labour, New Delhi by exercising the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 has referred this dispute for adjudication vide order No. L-12012/273/2001/IR (B-I) dt. 21-11-2001 on following schedule.

SCHEDULE

“Whether the action of the State Bank of India, Nagpur in awarding the punishment of dismissal from service to Shri S.O. Awachar from the service is justified? If not, what relief the said workman is entitled?”

This reference was received in March, 2002. Notices were issued to both the parties fixing 22-03-2002.

On 22-03-02 the counsel for the management filed Vakalatnama. The workman did not turn up. The case was again adjourned to 12-04-02, 14-05-02 and 10-06-02. Neither the workman turned up nor any representative of his union appeared to conduct the case for the workman.

From 22-03-02 the workman is regularly absent and no Statement of Claim has been filed either by workman or his union representative. At the workman S.O. Awachar himself avoided to contest the case and has not submitted any Statement of Claim either himself or through his Assistant General Secretary, S.T. Gulgulwar, the case is disposed of for want of prosecution.

ORDER

No Statement of Claim has been filed by the workman S.O. Awachar or his union representative, the reference is disposed of for want of prosecution.

Date: 10-6-02 B. G. SAXENA, Presiding Officer

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2507.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापट्टनम पोर्ट ट्रस्ट के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-06-02 को प्राप्त हुआ था।

[डीवाई. नं. 145 दि. 18-06-02]

बी. एम. डेविड, अवर सचिव

New Delhi, the 15th July, 2002

S.O. 2507.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Visakhapatnam Port Trust and their workman, which was received by the Central Government on 18-06-02.

[Dy. No. 145 dt. 18-06-02]

B.M. DAVID, Under Secy.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT : VISAKHAPATNAM

Present : Sri C Sambasiva Rao, M.A., B. L., Chairman &
Presiding Officer.

Dated : 13th day of December, 1999.

I.T.I.D. No. 17/97

THIS PETITION IS FILED DIRECTLY UNDER
SECTION 2A(2) OF THE I.D. ACT.

BETWEEN

K. Chandra Sekharam,

S/o Late Ramamurthy,

Aripaka, Via Sabbavaram,

Visakhapatnam.

Workman

AND

The Chairman,

Visakhapatnam Port Trust,

Visakhapatnam.

Management.

This dispute coming on for final hearing before me in the presence of Sri P. Venkateswararao, Advocate for workman and Sri G. V. Reddy, advocate for management, upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This is a petition filed by a workman under Sec. 2A(2) of the Industrial Disputes Act, 1947 seeking the relief of reinstatement with back wages and continuity of service.

(2) As per the claim of the workman he has been working with the management from May, 1982 without any remarks. He has never been issued any memo or charge sheet for any negligence in performing his duties. While he has been working as a crane operator in 1997, he has fallen from a mobile crane MC 16 and he has sustained injuries to his head and other portions of the body and due to head injury he has been advised rest as his status was described in clinical terms as non compose martin and as such he has been undergoing prolonged medical treatment. Added to that the management who is perfectly aware of the accident did not choose to pay the compensation nor deposited the same before the authority under the workman's compensation Act. Further his daughter has been kidnapped in the year 1992 and he informed the same on 8-2-92 to Chief Medical Engineer about his problems. The management issued a memo on 30-3-96 alleging that he remained absent unauthorisedly from 22-1-96 till the date of charge sheet dated 27-3-96. He submitted his explanation stating that he has been undergoing treatment for the injuries sustained by him during the course of employment and that he has not violated the regulation nor committed the misconduct. An enquiry was conducted on 30-9-96 and he received the copy of the same. The enquiry officer was biased against the workman and he adopted a procedure of questioning and recording the answers. In spite of such pitiable conditions which is within the knowledge of respondent has choosen to terminate the services of workman by office order dated 30-1-97, which is illegal and unjustified.

(3) For that a rejoinder is filed by the management denying the allegations made in the petition. It denied the allegations of sustaining injuries by the workman. It submitted that the workman met with an accident during his working hours, he was granted hospital leave for a period of three months five days from 31-1-95 to 4-5-95 as

recommended by the Medical Officer. The CMO has issued fit certificate to the workman has specifically stated that there is no loss of earning capacity and as such the payment of compensation under Workman's Compensation Act does not arise at all. He was removed from service for his unauthorised absence. He preferred an appeal stating that his daughter has been kidnapped and the same was allowed and his penalty was set aside by the disciplinary authority on 7-10-93. It denied that he has no one at his home to send his leave application and intimate about his sickness and due to his domestic problems he is keeping indifferent health is not a ground for his absence. He was charge sheeted for major penalty on 30-3-96 for long unauthorised absence from duty from 22-1-96 to till the date of drafting the charge sheet i.e., 27-3-96 without leave which is created as unauthorised absence and for the same the management's work was badly disclosed. He submitted his explanation on 19-4-96 even though he acknowledged the receipt of the charge sheet on 6-4-96 and denied the charge levelled against him when the disciplinary proceedings were pending he again absented from duty unauthorisedly from 17-5-96 to 28-8-96 and as such the disciplinary authority has remitted the case for departmental enquiry dt. 28-8-96 into the charges. In the preliminary enquiry the workman admitted his guilt and signed the proceedings. He did not state anything about the same in writing even at the time when the enquiry report, was made available to him. On the basis of the material and the preliminary enquiry report submitted to it, the disciplinary authority finally removed the workman from service w.e.f. 30-1-97 vide proceedings dated 30-1-97. He preferred an appeal, which was rejected by the Chairman, Port Trust. Hence the action of the management is quite justified and reasonable. The petition is liable to be dismissed.

(5) On 17-8-99 after perusing the material papers available on record this court held that there adequate opportunity given to the workman and the procedure followed in the domestic enquiry is not vitiated. Hence arguments were submitted U/s 11A of the I.D. Act.

(6) The points for consideration are :

1. Whether the workman is liable to be reinstated treating that punishment was given to him illegally and liable to be set aside ?
2. If the conclusions drawn in imposing the punishment is correct whether it is a case where this court has to interfere with the findings given by the management treating the quantum of punishment imposed is beyond proportion to the infraction of duties by the workman ?
3. Whether the workman is entitled to reinstatement with back wages and continuity of service as contended by him ?

(7) Ex. M1 shows the absence of the workman from duty from 22-1-96 till today i.e., 5-2-96 without any leave or sick. That letter is by Asst. Executive Engineer, who is the controlling officer of the workman. Again under Ex. M2 another letter was sent along with the attendance particulars from 1-1-95 to 5-3-96 the absence of the workman. It is shown in the column of leave or sick is 232 days. Thereupon a memorandum dated 30-3-96 was issued

wherein the present petitioner is directed to submit within 10 days of the receipt of that memorandum on the allegations of the charge. The charge is that he was absenting from duty unauthorisedly from 22-1-96 till the date of drafting the charge sheet on 27-3-96, without submitting any leave application or sick certificate causing much difficulty in making alternative arrangements in his place. It is also mentioned that he was censured thrice and imposed with minor penalty once and major penalty once for similar offence of his unauthorised absence to duty, but there is absolutely no change in his attitude and that shows his gross misconduct, unbecoming of a public servant and in as such he failed to maintain absolute deviation from duty. Ex. M4 is acknowledgement. Ex. M5 is the letter addressed to The Chief Mechanical Engineer, by the workman in which he expressed that he was not given opportunity to prove about earlier punishments. Though it is cited that those punishments are made for the purpose of this case, but the present charge is as such has nothing to do with the earlier punishments. The persons who are going to be examined are also indicated in the annexure to the charge under Ex. W3. For that the workman submitted an explanation telling about his injuries received by him in 1994 claiming himself he is a discipline man and due to the mental condition i.e. temporary insanity having non composmentis, he is not in a position to perform his duties. That cannot be considered as wilful absence from duty from 21-1-96 to 18-4-96 treating this cause as special one and he asked for reinstatement into service where he will prove he is an able employee, to the organisation. That letter is dated 19-4-96 under Ex. M5. He was intimated about the enquiry through a letter dated 28-8-96 under Ex. M6 and intimating the persons who are going to be examined and the persons who are to be presented in case of management witnesses. Then this workman was examined, where he was put questions, whether he wanted to accept the charge levelled against him and to that he stated that he accepted the charges levelled against him. So the enquiry was closed. The presenting officer submitted that he has no brief to submit anything more. After that a report was sent along with the enquiry report. The proceedings on the charge sheet issued to him is marked as Ex. M8. Ex. M9 which shows supply of copy of enquiry report. On that on 14-12-96 he submitted an explanation to which he admitted about receiving enquiry report. He reiterated as accepted due to the domestic problems and his daughter was expired and having calamity in the house and he could not attend his normal duties regularly and could not keep his mind study the duties and also his health condition is not well, due to the calamity. He sought for excusing him and permit him to attend his regular duties and asked to be excused. On proceedings issued by the disciplinary authority, the chief mechanical engineer ordered removal of the workman from service and he was granted permission to appeal within 45 days, which is filed under Ex. M11. On that a statement was submitted in the appeal seeking reinstatement, where he mentioned that he submitted sick certificate from 17-5-96 to 28-8-96. He stated that he has got 3 children and having no property. He got long sickness due to accident. He had so many loans. He requested to consider his representation on humanitarian consideration. Ex. M13 is the proceedings of dismissal of the workman w.e.f. 30-1-97 for his unauthorised absence. Ex. M14 is enclosing letter. The earlier proceedings with regard to the

cenures imposed on 26-4-85 is under Ex. M15. Ex. M16 indicates another punishment was imposed on 24-9-88 which was marked under Ex. M16 where another censure was imposed against him. Another punishment was imposed on 25-9-89 where his pay was reduced for two years under M10. On 25-4-91 six months annual increment was withheld for his unauthorised absence from duty. On 10-6-92 his annual increment next due, is withheld for a period of two years without cumulative effect, of his future increments. Under Ex. M20 dated 10-4-93 his annual increment is withheld for a period of one year without cumulative effect of his future increments besides denial of LTC facility for the current and future block periods i.e., 1990-93 & 1994-97. He was removed from service in the order dated 2-9-93. On that Appellate Authority passed an order dated 7-10-93 under Ex. M22 the order earlier passed under Ex. M21 set aside and he was reinstated. The period from that date of removal to his reinstatement was treated, as not on duty. Another punishment of lenient view taken for absence was also imposed on 21-11-95. On 19-4-96 under Ex. M24 though the workman was reported to duty on 19-4-96 he has not applied for any leave for the period from 22-1-96 to 18-4-96. Another report was submitted under Ex. M25 and on 29-5-96 for absenting duty from 17-5-96 to 29-5-96 without applying any leave. On 13-6-96 a notice was issued to the workman about his unauthorised absence from 17-5-96 till to date. It is subsequent to the present proceedings dated 13-6-96 and he was asked to immediately report to duty which was reported by him under Ex. M26. Ex. M28 is further report sent about his not reporting duty from 17-5-96 without any leave. The Chairman, Port Trust imposed order passed on 3-7-97 refusing to interfere the punishment imposed on the workman and dismissed the appeal. The letter dated 14-3-97 mentioned that enquiry officer has no right to mention all previous cases in his report.

Thus, on a careful perusal of the entire evidence available on record it is clear that even at the stage of enquiry the workman never questioned about his unauthorised absence which was opined by the authority as illegal and unauthorised absent. He only pleaded for mercy. It is no doubt proved that earlier conduct and subsequent conduct was considered in this case. It is not as if he was not apprised of the earlier conduct and anyway all the punishments imposed him. So it is a clear case where the workman himself admitted about his unauthorised absence and the conclusions drawn with regard to the illegal and unauthorised absence by the disciplinary authority which was accepted by the Appellate Authority is not in anyway vitiated in coming to the conclusion of imposing penalty. The fact remains that in 1994 he received injuries by falling from the crane and he got upset in his life but the fact that the fall does not in anyway effected his mental position, as contended by the management which is not seriously disputed by the workman, by producing any evidence to the contrary, in the sense the treatment undergone by him for his mental illness. So in normal course the explanation of the workman cannot be accepted. But the fact remains the workman worked with the management right from 1982 till he was removed from service. No doubt he has got number of punishments earlier since he has got children and if it is only a case of absence but not a fraud or any grave allegations of misconduct against him in discharging his duties, this court feels that it is a fit case

where he has to be reinstated, but considering the facts he cannot be granted back wages and the period of absence prior to the enquiry until reinstatement which is due from the date of passing of this award till his reinstatement within a period of one month from the date of this award he shall be treated with no pay no work for the purpose of reckoning the seniority. There shall be continuity of service, but it does not absorb him from the earlier punishments which are already imposed against him in accounting the seniority. Accordingly the order of removal is modified setting aside the punishment of removal and directing the management to reinstate the workman into service within a month from the date of award without back wages but with continuity of service for reckoning the seniority alone. But the management is at liberty to consider in reckoning the seniority, about earlier punishments imposed prior to this removal order. In the circumstances of the case there shall be no order as to costs.

Dictated to Steno, transcribed by her, given under my hand and seal of the court, this the 13th day of December, 1999.

C. SAMBASIVA RAO, Presiding Officer

Appendix of Evidence, Witnesses Examined For

Workman : None Management : None

Documents marked for workman : Nil

Documents marked for Management :

Ex. M1	5-2-96	Letter addressed to Chief Mechanical Engineer by Assistant Executive Engineer.
Ex. M2	8-3-96	Letter addressed to Chief Mechanical Engineer by Assistant Executive Engineer.
Ex. M3	30-3-96	Memorandum of charge sheet.
Ex. M4	6-4-96	Postal acknowledgment.
Ex. M5	19-4-96	Explanation to Memorandum of charge sheet.
Ex. M6	28-8-96	Appointment of Enquiry Officer.
Ex. M7	30-9-96	Proceedings relating to preliminary domestic enquiry.
Ex. M8	3-12-96	Enquiry Officer's report.
Ex. M9	9-12-96	Letter addressed to the workman by Chief Mechanical Engineer.
Ex. M10	14-12-96	Letter addressed to the Management by workman.
Ex. M11	30-1-97	Proceedings of the Chief Mechanical Engineer.
Ex. M12	14-3-97	Letter addressed to the management by workman.
Ex. M13	3-7-97	Proceedings of the Chairman, Visakhapatnam Port Trust.
Ex. M14	10-7-97	Letter addressed to the workman by Management.
Ex. M15	26-4-85	Proceedings of the Chief Mechanical Engineer.
Ex. M16	24-9-88	Proceedings of the Chief Mechanical Engineer.

Ex. M17 20-5-89	Proceedings of the Chief Mechanical Engineer.
Ex. M18 25-4-91	Proceedings of the Chief Mechanical Engineer.
Ex. M19 10-6-92	Proceedings of the Chief Mechanical Engineer.
Ex. M20 10-3-93	Proceedings of the Chief Mechanical Engineer.
Ex. M21 2-9-93	Proceedings of the Chief Mechanical Engineer.
Ex. M22 7-10-93	Proceedings of the Chairman Visakhapatnam Port Trust.
Ex. M23 24-11-95	Proceedings of the Chief Mechanical Engineer.
Ex. M24 19-4-96	Letter addressed to Chief Mechanical Engineer by Assistant Executive Engineer.
Ex. M25 29-5-96	Letter addressed to Chief Mechanical Engineer by Assistant Executive Engineer.
Ex. M26 13-6-96/ 5-7-96	Letter addressed to workman by Chief Mechanical Engineer.
Ex. M27	Unserved postal cover (opened)
Ex. M28 9-7-96	Letter addressed to the Chief Mechanical Engineer by Assistant Executive Engineer.

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2508.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापट्टनम पोर्ट ट्रस्ट के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-06-02 को प्राप्त हुआ था।

[डीवाई नं. 146 दि. 18-06-02]

बी. एम. डेविड, अवर सचिव

New Delhi, the 15th July, 2002

S.O. 2508.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Visakhapatnam Port Trust and their workman, which was received by the Central Government on 18-06-02.

[Dy. No. 146 dt. 18-06-02]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT : VISAKHAPATNAM

Present : SRI K. VEERAPU NAIDU, B.Sc., B.L.,
CHAIRMAN & PRESIDING OFFICER.

Dated : 12th day of April, 2000

I T.L.D. (C) : 29/98

THIS PETITION IS FILED BY THE WORKMAN
DIRECTLY UNDER SEC. 2A(2) OF THE INDUSTRIAL
DISPUTES ACT, 1947

BETWEEN

G. Chandra Kumar.

Ex-greaser. MCC Section, E.No. 100018.

Vsp. Port Trust, C/o. K. Balakrishna, Advocate
Seven Hills.

45-50-20, Abidnagar

Akkayapalem.

Visakhapatnam.

Workman.

AND

(1) Chairman.

Board of Trustees.

Visakhapatnam Port Trust.

Visakhapatnam.

(2) The Chief Mechanical Engineer.

Visakhapatnam Port Trust.

Visakhapatnam

.....Management.

This dispute coming on for final hearing before me in the presence of Sri K. Balakrishna, Advocate for workman and Sri G. V. Reddy, Advocate for management. upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

(1) This petition is filed by a workman under Sec. 2A(2) of the Industrial Disputes Act, 1947 seeking the relief of reinstatement with back wages and continuity of service.

(2) As per the contentions of the workman he joined the management on 3-11-78 and worked without any remarks. He applied leave on 7-7-90 on the ground of his mother's health sinking and some assistance is required and he being the only male member, he applied leave and the leave was sanctioned, through their letter 5-9-90. He also applied leave without pay for two spells i.e. from 7-5-89 to 6-11-89 and 7-11-89 to 6-5-90 which were sanctioned and he reported to duty on 18-6-90. The management has also granted leave from 7-6-91 to 6-9-92 under the application of workman dtd. 7-6-91 and sanction order dtd. 14-6-91. The workman and his wife toiled unimaginably and consequently the latter had become sick and as a result of which he suffered with additional problems to meet the situations. He did not loose his endeavour of getting his mother survived from trauma of Asthma and Acute Rheumatic Arthritis and as to meet the situation he craved the kind indulgence of the management to grant leave without pay for further period of from 7-9-92 to 6-9-93 through his application dated 6-9-92 for which a letter was addressed by the management and one of his relatives by name Balan/of Madras passed the same to him who was in Kerala by them and he was asked to report duty on 29-1-93 by the management in that letter and he reported duty. He was issued charge-memo on the ground of unauthorised absence and overstayed etc. on 21-1-93 and he submitted his explanation on 22-2-93. He submitted that he applied

leave for 20 days through his application dtd. 11-3-93 and on being recommended by the section incharge he left the station. Later he fell sick and advised rest by the Medical Officer and he applied leave enclosing the medical certificate. The management conducted an enquiry without following the principles of natural justice. The enquiry is unlawful, illegal, arbitrary and unsustainable. The management did not consider his explanations, removed him from service which is bad in law. Hence the action of the management is not legal and unjustified.

(3) To that the management filed a counter denying the allegations made in the petition. It is submitted that the workman applied for six months leave from 7-5-89 to attend his old sick mother and the same was granted and another leave for another six months from 7-11-89 to 6-5-90 was also granted by it. The workman has overstayed without leave upto 17-6-90 and reported to duty on 18-6-90 and submitted an application for grant of leave for the period. He again applied leave without pay for 6 months from 7-7-90 to 6-6-91 on the same ground and the same was granted to him. He again applied leave for 15 months from 7-6-91 to 6-9-92 and the same was also granted by it on 14-6-91. Subsequently he sent another letter from Madras for extension of leave from 7-9-92 to 6-9-93 without pay and a letter dated 20-11-92 was sent to his latest outstation address by registered post informing him that his request for grant of extension of leave from 7-9-92 to 6-9-92 was not considered and the leave was not granted and he was instructed to report to duty within 3 days from the date of receipt of that letter. In response to that one letter came from Madras stating that he was out of station and camping at Kerala for treatment of his mother and later he reported to duty on 29-1-93. He was granted more than three years leave in relaxation of provisions of leave rules and as he has not reported to duty and stayed from 7-9-92 without sanction. Disciplinary action was initiated against him on 29-1-93 and sent it to his available address at Madras and Kerala and they were returned undelivered by making remarks "addressee left, present address not known" and "absent left". In the meanwhile he has reported to duty on 29-1-93 and to charge sheet was served on him and his acknowledgement dt. 19-2-93 and he submitted his explanation to it. Later he sent a letter dt. 20-3-93 from Madras reporting sick for two months from 20-3-93. The management conducted enquiry observing the principles of natural justice. He was informed telegraphically that his leave for 2 months was not considered and advised him to report to duty and to attend enquiry and later he sent a telegram requesting for his leave but it again intimated that his leave was not considered. In the above circumstances the enquiry officer has no other alternative except to proceed with the enquiry and to conduct it *ex parte*, as provided under rules. The enquiry was fair and proper enquiry. On the basis of the enquiry the workman was issued show cause notice on 11-6-93, but the workman did not give any response. The workman had sent a letter dtd. 27-6-93 by post, stating that he could not continue in Port Service due to domestic problems and requested to accept his resignation with immediate effect. The workman did not mention about his resignation in his claim statement. The time for preferring was expired by 28-8-93 and the workman sent a representation for the extension of time upto 10-9-93 to submit his appeal on the punishment

imposed against him and subsequently he submitted appeal on 11-9-93. His appeal was rejected by the appellate authority on 7-12-93 and confirmed the penalty of removal from service is imposed on the workman. Hence the action of the management is quite legal and justified.

(4) After perusing the records this court has expressed that there is enough evidence on record to show domestic enquiry was properly held and arguments were submitted U/S 11A of the ID Act by marking Exs W1 to W15 and Exs M1 to M53.

(5) The points for consideration are .

- (1) Whether the workman was removed from service without applying its mind by the management ?
- (2) If the conclusions drawn that in case of the management made out by the management whether it is a fit case where a lenient view shall be taken by the management and impose lesser punishment ?
- (3) To what relief the workman is entitled ?

(6) Ex W1 is the letter addressed on 7-7-90 by the workman to the Chief Mechanical Engineer of the management for grant of leave. He stated that he received the telegram, regarding his mother's ill-health and he being only son he has no option except to seek her blessings and requested to grant extension of leave without pay from 7-7-90 to 6-1-91 which was sanctioned as per Ex W2. Ex W3 is the letter of joining report by the workman on the expiry of leave from 1-11-89 to 6-5-90 and he was joining on 18-6-90. Under Ex W4 again he applied leave on L.W.P. from 6-6-91 to 6-9-92, a period of one year 3 months which was granted on 14-6-91 under Ex W5. Again he asked for further leave from 7-9-92 to 6-9-93 for a period of one year under Ex W6. Sri M. Balan addressed a letter to the management on behalf of the workman for extension of leave on LWP loss of pay mentioning that the petitioner was camping at Kerala for the treatment of his mother and he intimated him to respond to the communication. On that a letter was addressed by the workman about his mentioning that he could not join duty early, due to late communication since he was away at Kerala in a remote village for which his relative was already explained the reasons vide letter 27-11-92 under Ex W8. Ex W9 is the letter seeking permission to join duty on 22-2-93. Again he addressed a letter under Ex W10 to grant 20 days leave from 13-3-93 to 1-4-93, as he has to go to Madras immediately since his ailing mother's condition is very much serious as per the Telegraphic message received. On 20th March, 1993 he again sent a letter from Madras under Ex W11 that he will be reporting duty with fitness certificate on the expiry of the medical leave which was advised by a doctor which is enclosed to that letter. In the medical certificate it is mentioned that the workman was suffering with Lumbago under Ex W11. The time sought extension for submission of appeal is Ex M12 dated 1-9-93. Dismissing the appeal preferred by him order passed is under Ex W14. The assertion said to have been given by the earlier employer is under Ex W15.

As could be seen from Ex M1 the leave application was forwarded on 27-11-89 by the petitioner. Under Ex M2 dated 25-4-89 the workman addressed a letter applying leave for 6 months. Intimation sent about sanction of leave is Ex.

M3. The letter addressed by workman on 31-10-89 extension of granting leave is Ex. M4. Later subsequent leave letter on 1-11-89 is Ex. M5, which was granted as per Ex. M6. The report sent about joining of duty is Ex. M8 and copy to R2 is M7. He further extended leave without pay from 7-7-90 to 6-6-91 under Ex. M9 dated 7-7-90. The medical certificate issued by one Dr. V. S. Virupakshan, Tendiarpet, Madras is Ex. M10, which is shown to have been given by a MBBS doctor, not any specialist. The leave granted by the management is Ex. M11. Ex. M12 is the extension of leave by the management from 7-6-91 to 6-9-92 which is dated 7-6-91 on the ground that his wife fallen sick badly. Ex. M13 is the medical certificate for his wife's sickness that she was suffering with chronic Esnorphilia and that leave was granted under Ex. M14. Again the workman addressed a letter for extension of leave from 7-9-92 to 6-9-93 under Ex. M15. On that communication was sent by the management on 20-11-92. His last request was not considered and he was asked to join duty within 3 days under Ex. M16. The letter addressed by M. Balan which was earlier referred to original is marked as Ex. M17 and the workman issued with a charge sheet for his absence without sanction of leave mentioning about detailed enquiry as to how he availed the leave and so he could not grant leave under Ex. M18. Two letters were sent in this regard to his address which were returned under Ex. M19 and M20 and another two letters under Ex. M21 and M22. Finally the workman has written a letter to call him to report duty and also issued memo of charges under Ex. M24. In that he gave explanation under Ex. M25. A letter was sent by Asstt. Executive Engineer is Ex. M26. Ex. M27 is a letter addressed on 20-3-93 stating that medical certificate issued by the Doctor recommending his constant rest for the next two months and he requested grant of leave. He produced medical certificate after expiry of the period in joining, which is marked under Ex. M28. The appointment letter of enquiry officer is Ex. M29 dated 22-3-93 and on 30th March, it was intimated to the workman through telegram that his leave for two months not considered and advised to report duty immediately and asked to attend departmental enquiry. Under Ex. M30. Again he reported on 16-4-93 to extend his leave under Ex. M31. On that the management issued a telegram on 17-4-93 reporting the earlier telegram and asked the workman to attend his duties immediately under Ex. M32. Ex. M33 is a letter sent to the workman by the management with regard to the enquiry on 21-4-93 at 14.30 hrs. The acknowledgement is Ex. M34. Ex. M35 is another telegram sent by the management with regard to the enquiry on the above date. Ex. M36 is the telegram sent by the workman for extension of time to conduct enquiry. On that a telegram was sent by the management on 7-5-93 intimating the enquiry will be conducted on 12-5-93 at 14.30 hrs. under Ex. M37. Again a letter was sent by the management under Ex. M38 intimating the workman with regard to the enquiry on 12-5-93 at 14.30 hrs. and the acknowledgement is Ex. M39. Ex. M40 is another letter dated 12-5-93 by the management to the workman intimating the enquiry would be done on 14-5-93 at 14.30 hrs. Ex. M41 is also a telegram intimating the same message. Ex. M42 is another telegram with regard to the enquiry on 19-5-93 at 14.30 hrs. When not respond, to that by the workman, the management conducted enquiry and Enquiry Officer submitted his report. After perusing the entire proceedings and letters on record, the Enquiry Officer submitted his report under Ex. M44. On that

preliminary enquiry which is proposed to be held final enquiry and witnesses were examined also mentioned. The witnesses were examined and documents were also marked. The Junior Assistant was also examined. The copy of the proceedings was intimated to the petitioner and the proceedings are Ex. M45. Show cause notice was issued as per the standard form under Ex. M46. Under Ex. M47 he submitted a letter stating that he cannot continue in the service of the management due to domestic problems. Hence he submitted his resignation for port service and requested to accept the same with immediate effect. Not accepting his resignation, the management issued a removal order under Ex. M49 and Ex. M50 is acknowledgement of it. Ex. M50 is a request for extension of time for submitting appeal. He preferred an appeal under Ex. M52 and it was rejected under Ex. M53.

It is submitted by the learned counsel for the workman that as to the 'Leave without pay' he preferred the Visakhapatnam Port Employees (Leave Regulations, 1964) from page 1 to 17 in the booklet wherein regulation No. 5 it could be seen at page 2(83) of the regulations that unless the Board in view of the exceptional circumstances of the case otherwise determines, no employee shall be granted leave of any kind for a continuous period exceeding 05 years. Thus, the regulations are common to every establishment of the State or the Central Government. Even then, a proper enquiry is sine quo non. He relied upon a reported judgment of 1996(1) ALT 40 (DB of APHC) at para 3 page 86(4) of the booklet and AIR 1997 SC 947 at page 129 to 132 of the same. In 1996(1) ALT 40 the employee of APSEB is terminated for his unauthorised absence from duty for more than five years and so automatic termination of service as per rules or standing orders as it is without grant of leave which amounts to misconduct if employee cannot be removed from service without enquiry in spite of rules and standing orders providing for automatic cessation of service. That principle of law as such is not applicable to the present case, because the management sent so many letters and telegrams to the workman with regard to the enquiry but he failed to attend the same. The *principle of law* of the Supreme Court referred to is with similar facts is not applicable to the present case. As there is a case falling under A.P. Civil Services Rules

It is sought to be canvassed that under Ex. M15 he applied leave and so he continued his leave upto 7-9-92. Till 20th November, 1992 there was no action on behalf of the management and suddenly second respondent issued a memo. Even if workman is in the extraordinary leave there was no whisper from the 2nd respondent or from any quarters till 20-11-92. It is well settled principle of law that even if the workman has no leave at his credit extraordinary leave without pay shall be granted as per leave rules. Reg. 5 of the Leave Regulations of the management crystalized that the leave can be granted under LWP for a period of 5 years. The workman availed leave within the period of limitation and that was provided in the leave regulations. The counsel for workman relied a reported judgment of 1995(1) ALT 744 *M. Krishnan Raju, Asstt. Technical Officer, Commercial Electronics Group, ECIL, Hyderabad Vs. The Electronics Corporation of India rep. by its Managing Director, Industrial Development Area, Hyderabad and others*, which is not applicable to the present case. The counsel also relied upon a reported judgment of 1999 LLR

992 at page 993, the Supreme Court in *Union of India and Ors. Vs. Dinanath Shantaram Karekar and Ors.* 1998-II CLR 849 dealing with a similar facts situation opined that if a notice sent to the delinquent returned unserved with a postal enforcement 'not found', held that the notice so sent and returned could not legally be treated to have been served on the delinquent. In the above decision itself, the Supreme Court also opined that a single effort in sending notice to the delinquent cannot be treated as sufficient. But in the present case the workman was aware of the enquiry date and did not choose to participate in the enquiry and so the facts are different from the facts of the present case on hand.

A perusal of the entire material available on record even if these contentions finally the learned counsel submitted arguments under Sec. 11A of the I.D. Act as per the reported judgment of 1999(5) ALT 450 and argued that the order of termination is bad in law and sought relief as the punishment imposed is disproportionate to the misconduct and the same points were urged in the written arguments.

Whereas the management counsel has submitted that the conduct of the workman clearly shows that as to how many month he has taken opportunity and in spite of lenient view taken and opportunity provided after grant of leave the workman behaved as if it is the prerogative right to him to seek leave whereas the management made every effort to serve to the workman the show cause notices and notice of enquiry. Opportunity was given to participate in the enquiry which will be conducting by the management which the workman did not avail and ultimately the workman sought resignation to the job with an ulterior motive of getting benefits of resignation which are granted to similar such workmen in case of port employees, which cannot be applied to the workman in the present case. As a matter of fact the points raised about charges there is no question of go bye to the earlier version. The workman himself has admitted that he cannot do any longer his work and he left the station itself, not furnishing the particulars properly which made the management sending letters by the management to so many addresses when he is not interested to continue his job and the charges are proved beyond doubt inspite of the workman not participating in the enquiry proceedings, and management followed all the procedure and also by the enquiry officer, clearly reveals that is a fit case where the misconduct cannot be looked in taking a lenient view as the management itself has considered gave enough opportunities in case of the workman. Hence the petition is liable to be dismissed answering the points against the workman.

On a careful consideration and perusal of the entire records, facts of the case it is unfortunate even after hearing on domestic enquiry and action taken no appeal was made to the Court to provide him an opportunity to explain about his stand by appearing in person. Since admittedly domestic enquiry is held *ex parte*. The entire correspondence between the workman and the management clearly shows, the management was considerate enough to the workman, even though he was going on leave without prior sanction ignoring the principle that leave is not a matter of right but it is only a matter of discretion of the management. Protracted leave was applied for sanction and even without sanctioning he availed leave and later sought for

rectification of leave availed. The lenient attitude shown by the management was not at all cared for by the workman, treating that it is a prerogative right to him to be absent and without any sanction availing leave. Coming to the so called grounds for his absents from duty except sending medical certificate issued by some doctors indicating that he is suffering from Lumbago there is nothing on record even before this Court or at the stage of enquiry before the management if really the workman had such suffering preventing him not to attend duties. He complained that his wife was suffering with Etnophilia which is not at all such a serious disease for any common understanding with some knowledge of medicines. The earlier stand of treatment was his mother was seriously ill and management permitted him to go on leave but there are acceptable grounds in availing subsequent leave of failure of health of his own, again by absents from duties by saying different reasons obviously by producing some certificates about the so called sufferings undergone by him, his wife and his mother. If a close scrutiny is made the stand taken by him, at one place he says, he went for better treatment and to Madras and again for the same reasons he was in Kerala. But while going undergoing treatment he gave his address at Madras which caused inconvenience to the management to contact him to the address given by him at Madras. Considering every aspect and the material available before the Court, it cannot simply ignore the conduct of the workman by taking a lenient view especially when ultimately the workman himself has submitted his resignation, which obviously would give some financial benefits to him resignation if accepted by the management. On the other hand, the management imposed the punishment against the workman after considering the stand taken by the workman. But after dismissing he wanted to avail the benefits to consider his removal as resignation. The conduct of the workman in seeking to accept the resignation to his job, itself indicates that mentally the workman wanted somehow assert the same kind of benefit should be given to him and ultimately sought in this petition reinstatement. So the reinstatement itself cannot be considered in the circumstances if he is really intended to get along with his plea of employment by the workman is not a genuine one from the stand he has taken voluntarily that he resigned the job which was not accepted by the management.

In the result, the points are answered against the workman and in favour of the management and the petition is dismissed without costs. Accordingly nil Award is passed.

Dictated to steno, transcribed by her, given under my hand and seal of the Court, this the 12th day of April, 2000.

C. SAMBASIVA RAO, Presiding Officer

APPENDIX OF EVIDENCE WITNESSES EXAMINED

WORKMAN NONE FOR MANAGEMENT, NONE
DOCUMENTS MARKED

FOR WORKMAN:

Ex W1 7-7-90 Letter addressed to the management by the workman

Ex.W2	5-9-90	Letter addressed to the workman by the management.	Ex.M18	21-1-93	Standard form of charge sheet along with Annexure-I to III
Ex.W3		Letter addressed to the management by workman.	Ex.M19		Acknowledgement from G.C. Kumar
Ex.W4	7-6-91	Letter addressed to the management by the workman.	Ex.M20		Returned cover
Ex.W5	14-6-91	Letter addressed to the workman by the management.	Ex.M21		Acknowledgement from G.C. Kumar
Ex.W6	6-9-92	Letter addressed by the workman to the management.	Ex.M22		Returned cover for G.C. Kumar
Ex.W7	27-11-92	Letter to management by M. Valan.	Ex.M23	29-1-93	Letter to CME by G.C. Kumar
Ex.W8	29-1-93	Letter to the management by the workman.	Ex.M24		Acknowledgement for G.C. Kumar.
Ex.W9	22-2-93	Letter to the management by the workman.	Ex.M25	22-2-93	Letter to CME by G.C. Kumar.
Ex.W10	11-3-93	Letter to the management by the workman.	Ex.M26	15-4-93	Letter of AEE to CME.
Ex.W11	20-3-93	Letter to the management by the workman.	Ex.M27	20-3-93	Letter of G.C. Kumar to CME.
Ex.W12	1-9-93	Letter to the Chairman, Port Trust by G.C. Kumar.	Ex.M28	26-3-93	Medical certificate of G.C. Kumar.
Ex.W13	11-9-93	Letter to the Chariman, Port Trust by G.C. Kumar.	Ex.M29	22-3-93	Order of CME.
Ex.W14	15-12-93	Letter to the workman by the management.	Ex.M30	13-4-93	Telegram to G.C. Kumar by CME.
Ex.W15		Service certificate of the workman.	Ex.M31	15-4-93	Letter of G.C. Kumar to CME
DOCUMENTS MARKED FOR MANAGEMENT			Ex.M32	17-4-93	Telegram to G.C. Kumar by CME
Ex.M1	27-4-89	Leave application of G.C. Kumar sent through covering letter.	Ex.M33	13-4-93	Letter of EE to G.C. Kumar.
Ex.M2	25-4-89	Letters to CME by G.C. Kumar.	Ex.M34		Acknowledgement.
Ex.M3	10-7-89	Letter to CME granting to G.C. Kumar.	Ex.M35	12-4-93	Telegram to G.C. Kumar by CME.
Ex.M4	31-10-89	Letter to CME by G.C. Kumar.	Ex.M36	20-4-93	Telegram to G.C. Kumar by CME.
Ex.M5	1-12-89	Letter to CEE to CME, VPP for grant of extension of leave to G.C. Kumar.	Ex.M37	7-5-93	Telegram to G.C. Kumar by Enquiry Officer.
Ex.M6	9-5-90	Copy of letter by CME to G.C. Kumar	Ex.M38	7-5-93	Letter to G.C. Kumar by Executive Engineer.
Ex.M7	18-6-90	Letter of CEE to CME.	Ex.M39	7-5-93	Acknowledgement from G.C. Kumar.
Ex.M8	18-6-90	Joining report of G.C. Kumar to CME.	Ex.M40	12-5-93	Letter to G.C. Kumar by Enquiry Officer.
Ex.M9	7-7-90	Letter to CME by G.C. Kumar.	Ex.M41	12-5-93	Telegram to G.C. Kumar by Enquiry Officer.
Ex.M10	7-7-90	Medical certificate of G.C. Kumar	Ex.M42	21-4-93	Telegram to G.C. Kumar by Enquiry Officer.
Ex.M11	5-9-90	Grant of leave on LWP to G.C. Kumar.	Ex.M43	19-5-93	Letter to CME by Enquiry Officer along with Inquiry report.
Ex.M12	7-6-91	Letter of G.C. Kumar to CME.	Ex.M44		Daily order sheet.
Ex.M13	1-6-91	Medical certificate of Mrs. G. Swathi, W/o G.C. Kumar.	Ex.M45	21-4-93	Proceedings of the Inquiry Officer in the inquiry against Sri G.C. Kumar.
Ex.M14	14-6-91	Letter of CME to G.C. Kumar.	Ex.M46	11-6-93	Standard form for issue of show cause notice.
Ex.M15	7-10-92	Letter to CME by G.C. Kumar	Ex.M47	11-6-93	Acknowledgment from G.C. Kumar.
Ex.M16	20-11-92	Letter of CME to G.C. Kumar	Ex.M48	27-6-93	Letter of G.C. Kumar to C.M.E.
Ex.M17	25-11-92	Letter to CME by M. Valan relative of G.C. Kumar.	Ex.M49	10-7-93	Proceedings of the C.M.E.
			Ex.M50	10-7-93	Acknowledgment from G.C. Kumar
			Ex.M51	1-9-93	Letter of G.C. Kumar to the Chairman, Port Trust, Visakhapatnam.
			Ex.M52	11-9-93	Letter of G.C. Kumar to the Chairman, Port Trust, Visakhapatnam.
			Ex.M53	7-11-93	Proceedings of the Chairman, Port Trust, Visakhapatnam.

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2509.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गैस अथॉरिटी ऑफ इंडिया लि. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-06-02 को प्राप्त हुआ था।

[डीवाई. सं. 147 दि० 18-6-02]

बी. एम. डेविड, अवर सचिव

New Delhi, the 15th July, 2002

S.O. 2509.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management, Gas Authority of India Ltd. and their workman, which was received by the Central Government on 18-06-02.

[Dy. No. 147 dt. 18-6-02]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, VISAKHAPATNAM

Present : SRI C. SAMBASIVA RAO, M.A., B.L.,
CHAIRMAN & PRESIDING OFFICER

Dated 8th day of November, 1999.

I.T.D. (C) No. 11/97.

DIRECTLY FILED U/SECTION 2A(2) OF THE
INDUSTRIAL DISPUTES ACT.

BETWEEN

Kothala Raja Ratnam,
S/o. Venkata Reddy,
K.V. Lanka,
H/o. Thotaramudi Village,
Inavilli Mandalam,
East Godavari District.

.. Workman.

ANL

The Gas Authority of India Limited,
(Central Government undertaking)
D. No. 16-7-18, Jothi Avenue,
Danavaipeta, Rajahmundry-3.
Rep. by Regional Manager/Office Incharge.

.. Management

This dispute coming on for final hearing before me in the presence of Sri K. Kameswara Rao, advocate for workman and Sri M. Ramdas, advocate for management, upon hearing the arguments of both sides and on perusing

the entire material on record, the Court passed the following.

AWARD

1 This is a dispute raised by a workman under Sec. 2A(2) of the Industrial Disputes Act, 1947 seeking the relief of reinstatement with all back-wages and other benefits due to such employees holding the discharge of the petitioner as illegal and costs of the petition.

2 As per the allegations of the workman that the management appointed the father of the petitioner as Caretaker at the Gas point in Tottaramudi Village in Inavilli Mandalam, East Godavari District on a monthly salary of Rs. 600 on 6-5-92. He was recruited on the recommendations of its contractor by name K. Venugopala Rao. But unfortunately the father of the workman died on 13-2-95. On compassionate grounds the management appointed the workman who is the son of the deceased person on the same terms and conditions on 14-2-95. As this is a good job in a Central Government undertaking with job-security pulls and counter pulls applied on the respondent by influential people in the locality, to have their own people in the jobs and consequently the management caved in and removed the workman from job in the 1st week of April, 1995. Technically speaking, the workman also who was continuing the service of his father is deemed to have been in continuous service of the management company as having been appointed on compassionate grounds. The workman is considered a permanent employee of the management and the discharge of him is illegal. The management did not follow the provisions contained in the I.D. Act and hence this dispute between the petitioner and the management is an industrial dispute. The management failed to comply with the statutory provisions laid down under Sec. 25F of the I.D. Act. He is entitled to be reinstatement with all back-wages. He approached the Asstt. Commissioner of Labour at Rajahmundry with their grievances and submitted a petition No. 1 of 1995. He was advised to submit his claim before this Court. Hence the action of the management is not legal and valid.

3 For that the management filed a rejoinder denying the allegations made in the petition. It submitted that Kothala Venkata Reddy died on 13-2-95 but it is not known to this respondent personally. After his death the workman was appointed as Caretaker with effect from 4-2-95 on compassionate grounds on the same terms and conditions as applicable to late Venkata Reddy. No appointment order or termination order or confirmation order was issued to the workman and since the question of issuing such orders does not arise as the workman was not at all engaged by it. The work of caretaking was previously entrusted to a contractor, who in turn, used to maintain the same by engaging his own contract labour. The establishment is registered under the Contract Labour (Regulation & Abolition) Act, 1970. This respondent never appointed anyone directly for the caretaking work. It is the duty of the contractor to keep a watch the valve Stations by his workers and in case of any leakage or any other emergency to report the same to the respondent for necessary action. The contract initially was awarded to Sri K. Venugopala Rao on 1-7-91. Subsequently the work of Thotaramudi station along with 19 other S.V. Stations was awarded to

Sri K. Venugopala Rao from 16-1-93. After the expiry of the contract of Sri K. Venugopala Rao this management awarded fresh contract to M/s. Maheshwari Security Services, a DGR sponsored Ex-servicemen agency, w.c.f. 1-4-95 and the said agency engages its own personnel who are also ex-servicemen as caretakers of S.V. Stations. The engagement of the workman's father and after his life time the petitioner as contract labour by the previous contractor Sri K. Venugopala Rao at any of the S.V. Stations would not create any right in favour of the workman against this management to claim employment. He was never engaged by this management and consequently the question of removal from service did not arise. Hence there are no merits in the petition and the petition is liable to be dismissed.

4. A dispute was raised before the Asstt. Commissioner of Labour and the workman was advised to approach this Court and hence he filed this petition under Sec. 2A(2) of the I.D. Act. Since there is no enquiry held or no material is there with regard to the appointment and removal of the workman. Opportunity was given to both management and the workman to lead evidence. WW1 and MW1 are examined before this Court and Exs. M1 to M7 are marked for management.

5. The points for consideration are :

- (1) Whether there is a relationship of employee and employer between the management and the workman?
- (2) Whether the workman is entitled for reinstatement in case his contention is accepted as he is a workman of the management?

6. As per the contention of the workman his father was working as caretaker with the management at Tetharmudi point on a monthly salary of Rs. 600 in 1992 through ONGC contractor one K. Venugopala Rao. His father expired in 1995 February and on compassionate grounds that job was given to him on a monthly salary of Rs. 600 (Six hundred only) and he worked for three months till May, 1995. The management without assigning any reasons removed the workman from service. One Satyanarayana was appointed in his place. No notice was given or compensation was paid in lieu of notice. In his cross-examination he stated that his father worked with contractor Venugopala Rao. His father was not given appointment by the management but only by Venugopala Rao. He denied that contract works will be given to the contractors and Venugopala Rao was one of the contractors. He admitted that he was also given appointment by Venugopala Rao.

Whereas MW1, Law Officer of the management deposed that he was in charge of legal matters as an officer with the management. They have section-wise valve points to supply gas to various distributors and monitoring the pressure of gas and to deduct till there is any leakage in the pipe line at any point in the way. One Venugopala Rao was appointed for caretaking of the point at the section. He obtained licence under the Contract Labour Act which are filed M1 and M2. This workman was never employed by them. The contract with Venugopala Rao was discontinued hence there is no excess of relationship between the management and this workman. The management is not liable to any appointment of the workman. Venugopala Rao is a contractor and he himself appointed/engaged the

workman as contract labour to attend their duties. The management is never appointed the workman.

7. As could be seen from the evidence on record the petitioner himself admitted that his father was appointed by a contractor Venugopala Rao and the management has filed Exs. M1 and M2 showing about the registration of that contractor from the Contract Labour Act. In this case the workman has got service on his own account but that is also on the death of his father and on compassionate grounds he was engaged. If that is the case atleast at the time of compassionate appointment some kind of order should have been made showing he is a workman who was given such appointment. Unfortunately, the workman who seeks relief having got appointment whom a contract labour even as per his case did not choose to implead that contractor as a party to the petition and so that any violation of rule is there under the Contract Labour Act, to treat the management as a principal employer, as liable for the infraction of duties by its contractor under the Contract Labour Act. On the other hand, the management itself filed the documents pertaining to registration of the contractor under the Contract Labour Act. It is not a case where the earlier workman who is his deceased father was engaged by the contractor were removed by the management. As per the directions of the Government of India under which the respondent is functioning as per the guidelines of the Government with regard to the appointment of security personnel in PSUs from ex-servicemen security agencies sponsored by DGR. So the question of removal of the workman by the management is not established and the relationship of the workman and the management is also not established in this case. When the relationship of workman and the management is not established in the absence of any proof except the workman's self-saying contentions, it is very difficult to accept the contentions of the workman that he is a workman of the management and entitled to the benefits as claimed by him. Considering these aspects, it is held that the petitioner is not entitled to any relief as claimed by him.

8. In the result, the workman is not entitled to any relief and the petition is dismissed passing nil award deciding against the workman.

Dictated to stenographer, transcribed by her, given under my hand and seal of the Court, this the 8th day of November, 1999

C. SAMBASIVA RAO, Chairman & Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED FOR

Workman :	Management :
WW1 : K. Rajaratnam,	MW1 : Venkatesh

DOCUMENTS MARKED.

FOR WORKMAN : NIL

FOR MANAGEMENT.

Ex. M1 : 3-12-93 Letter addressed to K. Venugopala Rao, contractor by the Asstt. Labour Commissioner (Central), Visakhapatnam

Ex. M2 : 14-12-94 -do-

- Ex. M3:4-2-94 Office Memorandum issued by Ministry of Defence
- Ex. M4:11-11-94 Office Memorandum issued by Ministry of Industries.
- Ex. M5:31-8-94 Letter addressed to the Management by the Director, Employment.
- Ex. M6:2-1-95 Inter Office Memo issued by the management.
- Ex. M7:1-3-95 Letter addressed to the M/s. Maheswari Security Agency by the management.

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2510.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापट्टनम पोर्ट ट्रस्ट के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-06-02 को प्राप्त हुआ था।

[डीवाई. सं. 148, तिथि 18-6-02]

बी. एम. डेविड, अवर सचिव

New Delhi, the 15th July, 2002

S.O. 2510.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management, Visakhapatnam Port Trust and their workman, which was received by the Central Government on 18-06-02.

[Dy. No. 148, dt. 18-6-02]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT VISAKHAPATNAM

Present : SRI C. SAMBASIVA RAO, M.A., B.L.,
CHAIRMAN & PRESIDING OFFICER

Dated 9th day of November, 1999.

I.T.I.D. (C) 33/97.

THE PETITION IS FILED DIRECTLY U/SEC. 2A(2) OF
THE I.D. ACT, 1947

BETWEEN

Kasarapu Gopala Rao.
D. No 26-32-7, Ramakrishna Street.
Near Rama Mandiram.
Visakhapatnam-530 001

Workman

AND

Management,
Visakhapatnam Port Trust,
Visakhapatnam-530 035

... Management

This dispute coming on for final hearing before me in the presence of Sri B. V. Rao, Authorised Representative for workman and Sri B. Gowri Sankar Raju, advocate for management, upon hearing the arguments of both sides and on perusing the entire material on record, the court passed the following :

AWARD

1. This is a petition filed by a workman under Sec. 2A(2) of the Industrial Disputes Act, 1947 seeking the relief of reinstatement with back wages and continuity of service.

2. As per the claim statement of the workman he was an ex-workman under the management until summarily terminated on 26-5-81, without assigning any reasons. His last drawn salary is Rs. 1600 per month. His father (late) Kasarapu Tatayya was a permanent employee under the management and at relevant times, he was working as Carpenter Grade-I and he expired while in employment on 15-12-79. His mother requested the management to provide employment to him, as is the usual practice in existence in the management passed orders conceding his mother's request. He was called for interviews and medical tests and it was conducted according to rules. His lien of employment is qualified by virtue of his late father's service in this management. Even though he was sufficiently qualified for the post of messenger he was discriminated and denied that post which was on permanent basis and on the other hand he was selected for the post of Shore Khalasi and enrolled in employment on 11-12-90. He was terminated on 26-5-81, which is illegal and arbitrary. He approached employees union and later the management offered him fresh appointment on 24-8-83 in the post of Railway Khalasi/Hamal in the pay scale of Rs. 325-461. Since he have raised industrial dispute, the management refused to permit him to join the said post. Thus, the management discriminated and denied him justice for second time. He approached conciliation officer and there it was failed and the proceedings were closed. He filed writ petition No. 13263/84 and writ appal No. 1535/1984 before Hon'ble High Court, which were dismissed. A special leave petition was rejected by Supreme Court as Time barred on 10-8-93. Hence the action of the management is not justified and illegal.

3. For that the management filed a rejoinder denying the allegations made in the petition. It submitted that while working as casual Khalasi the workman's services were terminated w.e.f. 23-5-81 as he was found unfit for retention on the basis of his gross misconduct of attempted theft of Port property. The rules and regulations are applicable to their regular employees but not to the casual employees. The management conducted necessary enquiries before taking action to terminate the services of the workman. The management requested to furnish the remarks of the petitioner for fresh appointment as a Railway Khalasi and previously the workman raised industrial dispute and the same was not referred for adjudication by the Central Government a writ petition W.P. No. 13263/84 and W.A. 1535/84 also filed by him but the dispute could not be referred for adjudication. An SLC was also filed before Supreme Court and the same was also dismissed as it is

time barred. Hence the present petition is maintainable under law as there is no reference by the Central Government. Hence there are no merits in the petition and the petition is liable to be dismissed.

4. For that a rejoinder is filed by the workman denying the allegation of the management. He submitted that the management has come up with the allegations of theft after more than one year and he objected the same and demanded to prove the allegations of theft. The management ought to have recorded to proper procedure in observance of principles of natural justice or the procedure as laid down in the service regulations of the establishment. Had the allegation been true and fact. It silence for all these years in substantial ground that it acted malafidely in terminating the workman's services. This dispute is not at all time barred. The maintainability of petition, even after the respondent is Central Government Body, has been already settled by the courts of law, which law will be presented in the course of enquiry.

5. Since there is no adequate record and domestic enquiry report is not there, enquiry was held before this court on the request of the management. WW1 and MW1 and MW2 are examined. Exs. W1 to W12 for workman and Exs. M1 to M7 for management are marked.

6. The points for consideration are :

- (1) Whether the earlier proceedings alleged by the petitioner cannot precluding him for raising this dispute before this dispute once again ?
- (2) Whether the petitioner is removed without following the procedure under Sec. 25F of the I.D. Act or any other provisions of law in the I.D. Act and whether he is entitled to the reliefs as claimed by him ?
- (3) Whether the workman is entitled to the relief of reinstatement with back-wages and continuity of service ?

7. As per the case of the workman on compassionate grounds he got the job as his father died while working with the management as Carpenter. He was intimated under Ex. W1 to apply for job and so he applied the same. He was called for interview under Ex. W2 and another call letter Ex. W3 for the posts of Messenger and Khalasi respectively. Later he provided with a job of Khalasi under Ex. W4 and he joined on 16-2-80 along with him 9 persons were appointed. Some demand was made to pay amount and same of the employees paid the amount and their services were made permanent. But he expressed his inability to pay and his employment was stopped to him under Ex. W5, without any enquiry. Then he approached the union and they approached ACL. Again he was issued call letter pending the proceedings by the management for appointment of Railway Khalasi/Hamali under Ex. W7. On seeing this letter the ACL closed his proceedings and refused to refer the matter. Then he filed a writ and division bench passed order holding that there is no need of interfering with the order by the Asstt. Commissioner of Labour under Ex. W8. Then he approached Supreme Court which was later dismissed stating that the petition is time barred which is under Ex. W9. The recruitment service

seniority rules Ex. W10 and W11. He denied that he was appointed only as casual labour in port trust. He denied that he committed theft of paint tins and on the same reason, he was removed on 23-3-91. He do not know about the sending a letter under Ex. M1. He also denied that the management conducted enquiry and after that only he was removed

Whereas MW1 Sr. Asstt. CME Depot deposed that the workman was appointed as casual labour on daily wages on compassionate grounds on the account of his father's death. While he was going away with one litre of grey paint Central Security Force caught him and disciplinary proceedings lodged against him on 23-3-81, and on that ground he was removed from service since he was a temporary employee working on daily wages. They never issued orders to the workman on permanent basis. He said that he does not know personally about the nature of appointment given to him. He deposed in his cross-examination that he does not have any personal knowledge about this matter.

Whereas MW2 personnel officer of the management deposed that he knows the facts of the case. The workman was appointed as Khalasi in the management on the account of his father's death on compassionate grounds. He was found stealing a tin of paint and caught by Central Industrial Security Force personnel. He admitted his mistake and on that a letter was addressed by Asstt. Commandant of Central Industrial Security Force to the management under Ex. M2 dated 11-5-81. The seizure memo of stolen property in Ex. M3. The confession statement given by the workman is M4. Since he is a casual Khalasi, his service were terminated under Ex. M5. He filed a writ petition before High Court of A.P which was dismissed under Ex. M6. The writ appeal preferred is also dismissed under Ex. M7. He denied that the workman was removed without following the rules and regulations of the company. He denied that no domestic enquiry was held.

Ex. W1 is the letter submitted by the mother of the workman about the death of Sathayya on 15-12-79 and a request was made for appointment of her son in the Port Trust. On the basis of that a letter was issued under Ex. W2 by the management to submit all original certificates of the workman on 10-7-80 at 14.00 hrs. Similarly such letter is sent on 21-11-80 under Ex. W3. Ex. W4 is another letter sent to him on 11-12-80 to attend office immediately with all original certificates. Under Ex. W5 the workman was intimated that his services were terminated in which it is simply mentioned that the services of Sri Kararapu Gopala Rao, S/o. Late Sathayya casual labour Khalasi (Shore) in E/M Section are terminated w.e.f. 23-5-81. Ex. W6 notice given for conciliation proceedings marked to the workman along with notice given to the Chairman, Port Trust also Ex. W7 is a notice given to attend to the office of the Traffic Manager, Visakhapatnam Port Trust on 2-9-83 at 10.30 hrs. Obviously this is reference to subsequent opportunity given for the recruitment with notice dated 24-8-83. Ex. W8 is the writ appeal proceedings in 1535/84 dismissing the appeal. Ex. W9 is the dismissal of SLC preferred by the workman. Ex. W10 is the rules of recruitments, seniority and promotion regulations, 1964 which are applicable to Class-I, Class-II, Class-III and Class-IV posts under the board but shall not apply to those posts the incumbents of, which are the

Heads of departments. In the definition of 2(b) appointing authority in relation to any grade or post means the authority empowered under the VPT Employees Reg., 1964 to make appointments to that grade or post. Under clause 2(e) direct recruit means a person recruited on the basis of a competitive examination or interview or both by the staff selection committee, duty post means any post of a particular type whether permanent or temporary, employee means an employee of the Board. Under Clause (j) permanent employees in relation to any grade or post means an employee who has been substantively appointed to a substantive vacancy in that grade or post. On a glance of entire rules it does not show whether they are applicable to casual labour appointed by the management. Ex.W11 is recruitment rules which shows there are 9 departments in the VPT and in mechanical department (Class III and Class IV posts) are mentioned. Under Visakhapatnam Port Employees Temporary Service Regulations, 1964 it is mentioned under 1(3) they shall apply to all persons who hold a post under the Board but who do not hold a lien on any post under that Board. These regulations shall not, however, apply to employees engaged on contract, employees not in whole-time employment, employees paid out of contingencies, persons employed in extra-temporary establishments, if any, or in work charged establishments, and such other categories of employees as may be specified by the Board. Temporary service means officiating service in a temporary or in a permanent post under the Board. The termination of services of employees not in quasi-permanent services the service of a temporary employee, who is not in quasi-permanent service, shall be liable to termination at any time by notice in writing given either by the employee to the appointing authority, or by the appointing authority to the employee. The period of such notice shall be one month unless otherwise agreed to by the appointing authority and by the employee. Provided that the service of any such employee may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice, or as the case may be, for the period by which such notice falls short of one month or any agreed longer period.

These rules do not indicate about the casual workman appointed. So there is some substance in the contention by the management, these rules are not applicable to the workman. M1 is order of termination w.e.f. 23-5-81 on account of misconduct and about the theft of port property and he was found unfit for retention in service. Ex M2 is letter addressed to the Chief Mechanical Engineer with regard to apprehension of the workman casual labour. It is mentioned that on 2-5-81 around 12.30 hrs. their SGs have apprehended the workman casual labour at docks main gate while he was carrying about 1 litre grey paint in a tin unauthorisedly and caught for departmental action. A seizer memo is marked under Ex.M3. Ex.M4 is statement given by workman about his apprehension with paint in a tin and was apprehended. Ex. M5 is the order passed on termination of service w.e.f. 23-5-81 afternoon and no reasons are stated in this. Ex. M6 is the order of High Court in writ petition No. 13263/84 where the reference which is sought to be made was rejected by the Government which was questioned by the workman, it is observed that there are no mala fides in the action of the management in dispensing with the casual services of the workman inasmuch as he

was caught red handed while carrying away unauthorisedly a tin of grey paint and that he has also confessed his guilt. It is held that discretion exercised by the management is not arbitrary.

As could be seen from the evidence on record even the High Court has taken cognizance on the issue with regard to theft and consequent upon that his services were terminated basing on the confession statement and seizer memo of the sales property submitted by the cognizance. It is not a case where the workman was indicted for the first time with the defence by the management, inasmuch as he is aware of such observations made by the High Court, accepting the contentions of management.

Under Sec. 25-F no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice. The workman has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner is served on the appropriate government or such authority may be specified by the appropriate government by notification in the official gazette. Under Sec. 25-B definition of continuous service of one year at clause 2(ii) two hundred and forty days, in case of regular establishment. In this case on hand admittedly the workman recruited in the month of December, 1980 and he was removed from service in the month of May, 1981 which are not disputed. Since the workman himself admitted he was removed from service in the month of May, 1981 and he was appointed on 16-12-80, he worked only for 6 months 15 days as a casual workman. The final order passed under Ex.M4 does not disclose or assign any reasons for termination but a simple order of termination was issued. So the observation shows the workman did not work for one year or 240 days with the management and so that it may be held that he is not entitled to the benefits of Sec. 25-F of the I.D. Act. The learned counsel for the workman relied upon a reported judgment of 1999(2) Andhra Weekly Reporter 38 SC in Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Limited and another their Lordships K.Venkataswammi and M. Jagannatha Rao, JJ observed that there are two modes of termination of service noticed and if the master gathers some prima facie facts, but does not wish to go into the truth, but decides not to continue a dubious employee, it is not dismissal but termination simpliciter. If an enquiry is held, and the employee is not heard, the enquiry is the foundation and the termination would be bad. In the case there in the enquiry officer examined witnesses, recorded their statements, gave a finding regarding acceptance of bribe by the petitioner employee. It is held that it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or to direct a decision about the truth of the allegations. But if he conducts an inquiry only for purpose of providing the misconduct and

the employee is not heard, it is a case where the inquiry is the foundation and the termination will be bad. The counsel for the workman argued that these facts are applicable to the present case. Since in this case the basis for termination is the report given by the Central Industrial Security Authorities and without even enquiry into the matter basing on so called confession and seizer memo he was removed from service and such termination is illegal. But on a consideration of the contentions of the learned counsel for the workman this court is unable to accept that contentions. In the present case on the basis of the material available a simple termination order was issued under Ex. M4, it is not a case where an enquiry was held but the workman's services were terminated on the basis of the complaint given by the security officials. Hence the ratio of the judgment is not in any way helpful to the present case. Another judgment of AIR 1986 Supreme Court 1680-1986 Lab. I.C. 1191 in S. Govindaraju Vs. I.S.R.T.C. and Another in which it is observed by their Lordships O. Chinnappareddy and K.H. Singh, JJ. Temporary/Badli appointment given to candidate whose name was selected in select list in accordance with regulations such candidate gets right to be considered for appointment as and when vacancy arises and termination of such candidate without given him opportunity of explanation held unjustified. Even this Judgment is not in any way helpful to the present case of the workman herein since it is not a case of appointment of the whom on the basis of selection held as per the recruitment regulations. Hence the principles laid down in that case are also not applicable to the present case.

Though the principle of res judicata is not strictly applicable as in CPC still the observations made accepting the contentions of the management with regard to the infraction of duties which led to discharged from service of the workman was taken cognizance by the High Court and theft of the workman committing there is no need to interfere with those facts, which served as a background for removal from service treating his services as not satisfactory and a simple order is issued terminating the services of the workman without giving any reasons or in stigma. So those observations would have a binding effect on this court.

The question of following procedure U/s. 25-F of Industrial Disputes Act in removing him from service in view of the findings given supra as the workman is worked less than 6 months and not even worked for 240 days continuously in a year, while enjoying the post as a casual labour, appointed on compassionate grounds, on account of the death of his father.

8. In view of the findings given above, the petitioner is not entitled to any relief sought for and the petition is dismissed passing nil award deciding the matter against the workman.

Dictated to steno transcribed by her given under my hand and seal of the court this the 9th day of November, 1999.

C. SAMBASIVA RAO, Presiding Officer

2002 GI/2002—19

APPENDIX OF EVIDENCE IN ITD 33/97

WITNESSES EXAMINED FOR

For Workman .	For Management .
WW1 : Gopala Rao.	MW1 : M. Subbaiah Sastry.
	MW 2 : Muryala Rao

DOCUMENTS MARKED FOR WORKMAN .

Ex. W1 : 12-5-80	Letter to K. Sattiyamma by management.
Ex. W2 : 2-7-80	Letter to K. Gopal Rao by VPT
Ex. W3 : 21-11-80	-do-
Ex. W4 : 11-12-80	-do-
Ex. W5 : 21-5-81	Termination order of the workman
Ex. W6 : 23-7-83	Letter to management by ACL(C). Vsp.
Ex. W7 : 24-8-83	Letter to the workman by management.
Ex. W8 : 27-11-84	Xerox copy of the order in W.A. No 1535/84
Ex. W9 : 27-11-84	Xerox copy of the proceedings in CC No. 21456.
Ex. W10 :	Xerox copy of VPT Employees Recruitment Regulations.
Ex. W11	Recruitment Rules for all posts in VPT
Ex. W12 :	VPT Temporary Service Regulations. 1964.

FOR MANAGEMENT :

Ex. M1 : 27-6-81	Letter to the General Secretary VPE Union by CME
Ex. M2 : 11-5-81	Letter to the management by ACL.
Ex. M3 :	Xerox copy of seizer memo
Ex. M4 :	Letter addressed to CIFS Commandant by workman.
Ex. M5 : 25-5-81	Termination order of the workman.
Ex. M6 : 20-9-84	Xerox copy of the order in WP No. 13262/84
Ex. M7 : 27-11-84	Xerox copy of the order in W.A. No 1535/84

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2511.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीवे शिपिंग (प्रा.) लि. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-06-02 को प्राप्त हुआ था।

[डीवाई. सं. 150 तिथि 21-6-02]

बी. एम. डेविड, अवर सचिव

New Delhi, the 15th July, 2002

S.O. 2511.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Visakhapatnam as shown in the annexure in the Industrial Dispute between the employers in relation to the management Secway Shipping (P) Ltd. and their workman, which was received by the Central Government on 21-06-02.

[Dy. No. 150 dt. 21-6-02]
B. M. DAVID, Under Secy.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT : VISAKHAPATNAM

PRESENT : SRI C. SAMBASIVA RAO, M.A., B.L.,
CHAIRMAN & PRESIDING OFFICER

Dated 20th December, 1999

I.T.D. (C) No. 12/99.

REFERENCE No. L-34011/13/IR(M) Dated : 22-04-1999.

BETWEEN

The General Secretary,
Port & Dock Stevedore Workers Union,
Ramapadma Nilayam,
D No. 14-25-32A (Upstairs) Dandu Bazar,
Visakhapatnam 530 002. . . Workman

AND

M/s Secway Shipping (P) Ltd.,
IInd Floor, D. No. 24-4-11,
Harbour Road, Near Mauslim Brothers,
Visakhapatnam 530 001 . . . Management

This dispute coming on for hearing before me in the presence of Sri S Rama Rao, Authorised Representative for workman and the management in person. On perusing the material papers on record, the court passed the following :

AWARD

All the workmen present. They also signed the memo and on questioning they stated that they have adjusted the case out side the court though the President of the union seeks time. The counter is not satisfied in his representation. Since the aggrieved people stated that they do not want any relief through court as adjusted out of court. Hence in these circumstances there is no justifiable grounds for not accepting the aggrieved workmen representative made personally in court and also signed by management.

Hence Nil Award is passed and reference is answered accordingly.

Given under my hand and seal of the court this the 20th day of December, 1999.

C. SAMBASIVA RAO, Presiding Officer

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2512.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापट्टनम स्टील प्लांट के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-06-02 को प्राप्त हुआ था।

[डीवाई. सं. 151 तिथि 21-6-02]
बी. एम. डेविड, अवर सचिव

New Delhi, the 15th July, 2002

S.O. 2512.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management, Visakhapatnam Steel Plant and their workman, which was received by the Central Government on 21-06-02.

[Dy. No. 151 dt. 21-6-02]
B. M. DAVID, Under Secy.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT : VISAKHAPATNAM

PRESENT : SRI C. SAMBASIVA RAO, M.A., B.L.,
CHAIRMAN, INDUSTRIAL TRIBUNAL & PRESIDING
OFFICER, LABOUR COURT, VISAKHAPATNAM.

Dated 7th day of July, 1999

I.T.D. (C) No. 23/97

This petition is filed by the workman directly U/Sec. 2A(2) of the I.D. Act.

BETWEEN :

C. Linga Murthy,
S/o Dr. (late) C. Pattabiram,
49-15-5, Lalithanagar,
Visakhapatnam 530 006. . . Petitioner

AND

1. The Chairman & Managing Director,
M/s Visakhapatnam Steel Plant,
Visakhapatnam
2. Dy. General Manager & Appellate
Authority, Visakhapatnam Steel Plant,
Visakhapatnam
3. Chief Supcrintendent Traffic (Maintenance)
Disciplinary Authority,
Visakhapatnam Steel Plant,
Visakhapatnam . . . Respondent.

This dispute coming on for hearing before me in the presence of Sri K. Gopala Rao, Advocate for petitioner

and of Sri Y. V. Sanyasi Rao, Advocate for Respondents 1 to 3. On perusing the material papers on record, the court passed the following :

AWARD

Workman is absent. No representation. Nil Award passed.

Given under my hand and seal of the court this the 7th day of July, 1999.

C. SAMBASIVA RAO, Chairman & Presiding Officer

नई दिल्ली, 15 जुलाई, 2002

का.आ. 2513.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एसोसिएटेड स्टोन इंडस्ट्रीज के प्रबंधन के सम्बन्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-06-02 को प्राप्त हुआ था।

[सं. एल. 29011/54/2000-आई.आर. (एम.)]

बी. एम. डेविड, अवसर सचिव

New Delhi, the 15th July, 2002

S.O. 2513.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Kota as shown in the annexure in the Industrial Dispute between the employers in relation to the management Associated Stone Industries and their workman, which was received by the Central Government on 17-06-02.

[No. L. 29011/54/2000-IR(M)]

B. M. DAVID, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा

पीठासीन अधिकारी : श्री मणि शंकर व्यास, आर.एच.जे. एस.

निर्देश प्रकरण क्रमांक : औ.न्या./केन्द्रीय/10/2002

दिनांक स्थापित : 13-2-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय नई दिल्ली के आदेश संख्या एल. 29011/54/2000/आई आर (एम) दि. 17-10-2000

निर्देश अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

मोहम्मद शफीक द्वारा जनरल सेक्रेटरी, पत्थर खान कामगार यूनियन, बंगाली कालोनी, छावनी, कोटा-324 001

—प्रार्थी श्रमिक

एवं

प्रबन्धक, एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि. रामगंजमण्डी/राजस्थान।
—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री एन.के. तिवारी

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री एस.एस. सिसोदिया
(प्रबन्धक) एवं
श्री रमेश राठौड़

अधिनिर्णय दिनांक : 29-5-2002

अधिनिर्णय :

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के उक्त आदेश दि. 17-10-2000 के जरिये निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

"Whether the action of the management of M/s Associated Stone Industries (Kota) Ltd., Ranganjmandi (Raj.) in terminating the services of Shri Mohammed Safik from 25-11-99 is legal and justified? If not, to what relief the disputant is entitled and from which date?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना विधिवत रूप में जारी की गयी।

3. इस प्रकरण में आगामी पेशी 9-7-2002 नियत थी, परन्तु आज स्वयं प्रार्थी श्रमिक मोहम्मद शफीक मय अधिकृत प्रतिनिधि श्री एन.के. तिवारी ने प्रार्थना-पत्र प्रस्तुत कर यह प्रार्थना की कि चूंकि लम्बित निर्देश/विवाद में उनके व अप्रार्थी के मध्य लोक न्यायालय की भावना से प्रेरित होकर आपसी राजीनामा सम्पन्न हो गया है, अतः पत्रावली पेशी में ले जाकर राजीनामे के आधार पर अन्तिम रूप से अधिनिर्णय पारित कर दिया जावे।

4. पक्षकारों की सहमति पर पत्रावली आज पेशी में ली गयी। प्रार्थी व अप्रार्थी की ओर से प्रबन्धक श्री एन.एस. सिसोदिया मय अधिकृत प्रतिनिधि श्री रमेश राठौड़ ने जो संयुक्त राजीनामा प्रस्तुत किया उसके तहत पक्षकारों में यह तय हुआ कि प्रार्थी अपने सेवा में पुनर्स्थापित होने के अधिकार को छोड़ते हुए अप्रार्थी से 55,000 रु. की राशि एकमुश्त प्राप्त करना स्वीकार करता है जो राशि उसे जरिये चेक दिनांकित 11-5-2002 अदा करी दी गयी है। पक्षकारों के मध्य यह भी तय हुआ कि एक सिविल रिट पिटि. न. 5443/98 जो माननीय उच्च न्यायालय में प्रमोशन बाबत विचाराधीन है वो भी इस राजीनामे के तहत सेटिल मानी जावेगी और उसमें प्रार्थी किसी प्रकार की कोई कार्यवाही नहीं करेगा।

5. पक्षकारों को उक्त राजीनामे की विषय-वस्तु पढ़कर सुनायी समझायी गयी जो उन्होंने सही स्वीकार की तदुपरान्त राजीनामा तस्दीक कर अधिलेख पर लिया गया। चूंकि पक्षकारों के मध्य लोक न्यायालय की भावना से प्रेरित होकर उक्त प्रकार का राजीनामा सम्पन्न हो गया है

और अब किसी प्रकार का कोई विवाद शेष नहीं रहा है, अतः प्रस्तुतशुदा राजीनामे के आधार पर सम्प्रेषित निर्देश/विवाद इसी प्रकार अधिनिर्णित किया जाता है जिसे नियमानुसार समुचित सरकार को प्रकाशनार्थ भिजवाया जाये।

अधिनिर्णय आज दिनांक 29-5-2002 को खुले न्यायाधिकरण में सुनाया गया जिसे नियमानुसार समुचित सरकार को प्रकाशनार्थ भिजवाया जाये।

मणि शंकर व्यास, न्यायाधीश

नई दिल्ली, 9 जुलाई, 2002

का.आ. 2514.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ इंजीनियर (एन. रीजन) आकाशवाणी एवं दूरदर्शन के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 59/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-2002 को प्राप्त हुआ था।

[सं. एल-42012/23/88-डी. 2(बी)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 9th July, 2002

S.O. 2514.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 59/2002) of the Central Government Industrial Tribunal/Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chief Engineer (N. Region) Akashvani and Doordarshan and their workman, which was received by the Central Government on 9-7-2002.

[No. L-42012/23/88-D. 2(B)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR
PRESIDING OFFICER

I. D. No. 59/2002 (Delhi No. 37/89)

Ref. No. L-42012/23/88-D-2(B) dated 20-3-89

BETWEEN

Nav Ratan, S/o Than Singh, E-3/63, Nand Nagari,
Shahdara, New Delhi

AND

Chief Engineer, North Zone, Akashvani and
Doordarshan Kendra, Jam Nagar House,
Harmants, Shahjahan Road, New Delhi

AWARD

By order No. L-42012/23/88-D-2(B) dated 20-3-89, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Nav Ratan, S/o Than Singh, E-3/63, Nand Nagari, Shahdara, New Delhi and Chief Engineer, North Zone, Akashvani and Doordarshan Kendra, Jam Nagar House, Shahjahan Road, New Delhi for adjudication to CGIT-cum-Labour Court, New Delhi. Later, the Central Government in the Ministry of Labour by order No. Z-200025/54/2001-CLS-II dated 19-4-2002 transferred the case to this tribunal for adjudication.

The reference under adjudication is as under :

“WHETHER THE ACTION OF THE MANAGEMENT OF CHIEF ENGINEER (N. REGION) AKASHVANI AND DOORDARSHAN IN TERMINATING THE SERVICES OF NAV RATAN W.E.F. 28-2-86 IS JUSTIFIED ? IF NOT, WHAT RELIEF THE WORKMAN CONCERNED IS ENTITLED TO AND FROM WHAT DATE ?”

2. The workman, Nav Ratan, raised this industrial dispute stating his appointment with the management of All India Akashvani and Doordarshan Kendra, Parliament Street, New Delhi w.e.f. 16-4-85 as a ‘Waterman’ on remuneration of Rs. 500 per month only. His payment was much less than the regular employees discharging same duties and so, the management was involved in unfair labour practices. He was denied other benefits like uniform, Casual Leave and Earned Leave, Gazetted/Festival/Restricted holidays, and Medical Leave etc. The management illegally terminated his services w.e.f. 28-2-86, without assigning any reason. He was not paid notice pay or retrenchment compensation, rendering his termination illegal. At the time of retrenchment, he was posted under the Chief Engineer, North Zone, All India Akashvani and Doordarshan Kendra, Jam Nagar, New Delhi. He was working against a regular permanent nature of post but he was discriminated and retrenched where as his junior were retained. Furthermore, during his association with the management from 16-4-85 to 28-2-86, he worked for more than 300 days much more than 240 days as required to be treated in ‘continuous service’ under section 25-B of the I. D. Act, 1947. The abrupt termination being in violation of section 25-F, G & H of the Industrial Disputes Act, 1947 read with Rules 76 & 77 of the I. D. (Central Rules) 1957, the workman seeks reinstatement with back wages.

3. The management has denied allegations made in the statement of claim. It is admitted that Nav Ratan was engaged as daily rated worker on payment of Rs. 13.60 per day w.e.f. 16-5-85. He was never employed or paid fixed amount of Rs. 500 per month as alleged. It is denied that he should have been treated as regular employee in the prescribed scale of Rs. 196-232 with the usual allowances admissible under the rules, revised to pay scale Rs. 750-940 w.e.f. 1-1-1986. It is pleaded that the services of the workman was not required any more on completion of the

work for which he was engaged. The workman was not engaged against any regular nature of work. The management further pleads that Nav Ratan had worked only for 239 days and so, was not entitled to benefit of section 25-F of the I.D. Act. In addition, the management also raised a preliminary objection questioning legality of reference under the Industrial Disputes Act, 1947, since Akashvani and Doordarshan is not an "Industry" as contemplated under the Act.

4. The preliminary objection that All India Akashvani and Doordarshan Kendra is not an 'industry' within the meaning of section 2(j) of the I. D. Act, stood resolved in view of decision of the Hon'ble Supreme Court in All India Akashvani and Doordarshan Kendra v. Santosh Kumar and others reported in Judgement Today 1998(1)SC 662. The court held in the said case that All India Akashvani and Doordarshan is an 'industry'.

5. There is no controversy about engagement of Nav Ratan as daily rated casual worker and payment on daily basis. Initially, it was pleaded by the workman that he was appointed on consolidated salary of Rs. 500/- per month but this plea was not pursued further in rejoinder or any other evidence. So, it can be safely taken on the basis of admitted facts that Nav Ratan was engaged on 16-4-85 as daily rated casual worker and his services were terminated w.e.f. 26-2-86. The management has filed a chart showing monthwise working days. This chart shows his total working for 239 days only.

6. In support of its case, the workman has not filed any documentary evidence to show his engagement on consolidated pay. Also, there is no material giving inference that some juniors to him were retained at his expense. No material or evidence has been placed to show his entitlement to wages at par with regular scale and the allowance attached with such regular employment. He reiterated facts recited in the statement of claim. However, during his cross-examination, he admitted to be a daily wagger and also admitted working for 239 days only. This admission simply corroborates management's version that the workman was a daily wagger not selected on regular basis as per procedure. It is further pleaded by the management that the workman was given opportunity to appear for regular selection but he could not qualify and so was not appointed. This fact remained un rebutted. Being so, the nature of engagement was totally adhoc and casual. In the said situation, it is for the workman to prove that he had actually worked for 240 days or more, in a year, to bring his engagement within the meaning of 'continuous service' as defined section 25-B of I. D. Act, 1947.

7. The workman submits that holidays and paid holidays were not added in calculating continuous service. Reliance is placed on behalf of the workman on case 1985 Supreme Court cases (L&S), 940, Workman of American Express International Banking Corporation v. Management of American Express International banking Corpn. In the said case, the Hon'ble Supreme Court defined expression 'actual service' and held that the above expression necessarily comprehend all those days during which the workman was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute/ Standing Orders etc.

8. In context of the above decision, the workman pleads to have worked for more than 240 days since holidays and paid holidays were not counted. This submission can not be accepted in absence of proof that the workman was paid for holidays or paid holidays. At initial stages, the workman's claimed appointment on consolidated amount of Rs. 500/- per month but, later changed to be daily worker. There is nothing to infer that the contract of employment was uninterrupted or there was any stipulation that the workman would be paid for seven days against actual working of five days in a week. Also, there is no evidence that there existed a post of 'Waterman' on regular basis. No evidence is available to prove that there existed a cadre of waterman, against the management's case that the nature of job of a waterman was seasonal. The onus was on the workman to prove the nature of alleged appointment and status against the post of waterman. There is also no material to indicate that some other daily rated worker, junior to workman, continued to work even after termination of his services. The management has pleaded specifically that on end of job, the engagement of the workman ceased. In the said situation, the workman failed to prove uninterrupted service for more than 240 days. In his cross-examination he admitted to have worked for 239 days only.

9. In view of above discussions and admission of the workman, it can be held safely that the case of the workman, Nav Ratan, is not covered by section 25-B of the I. D. Act, and he is not entitled to benefit under section 25-F of the said Act.

10. Accordingly, the action of the management of Chief Engineer (North Region) Akashvani and Doordarshan Kendra in terminating the services of Nav Ratan w.e.f. 28-2-86 was not unjustified. The workman is not entitled to any relief.

Award as above.

Lucknow

3-7-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 16 जुलाई, 2002

का.आ. 2515.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 अगस्त, 2002 को उस तारीख के रूप में नियम करती है, जिसको उक्त अधिनियम के अध्याय-4, अध्याय-5 और अध्याय-6 [धारा-76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध उड़ीसा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“जिला डेंकानाल की डेंकानाल तहसील के काशीयापड़ा, पाइकदहीकोरा एवं बलदोआबंघ क्षेत्र के राजस्व गाँव”।

[संख्या एस-38013/15/02-एस. एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 16th July, 2002

S.O. 2515.— In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2002 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Orissa namely :—

"The areas comprising the Revenue Villages of Kasiapada, Paikadahikora and Baladiabandh in Tahasil Dhenkanal of District Dhenkanal."

[No. S-38013/15/2002-SS. I]
K. C. JAIN, Director

नई दिल्ली, 23 जुलाई, 2002

का.आ. 2516.— केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उप-खण्ड (iv) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का. आ. 997 दिनांक 27-2-2002 द्वारा यूरेनियम उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 27-2-2002 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 की 14) की धारा 2 के खण्ड (ढ) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 27-8-2002 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. सं. एस-11017/9/97-आई. आर. (पी. एल.)]
एच. सी. गुप्ता, उप सचिव

New Delhi, the 23rd July, 2002

S.O. 2516.— Whereas the Central Government having been satisfied that the public interest so required has, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S. O. No. 997 dated 27-2-2002 the Uranium Industry to be a public utility service for the purpose of the said Act, for a period of six months from the 27th February, 2002.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2

of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 27th August, 2002.

[No. S-11017/9/97-IR(PL)]

H. C. GUPTA, Dy. Secy.

नई दिल्ली, 24 जुलाई, 2002

का.आ. 2517.— केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का. आ. 419 दिनांक 29-1-2002 द्वारा नाभिकीय ईंधन और संघटक, भारी पानी और संबद्ध रसायन तथा आणविक ऊर्जा को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 26 फरवरी, 2002 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 26-8-2002 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. सं. एस-11017/3/97-आई. आर. (पी. एल.)]
एच. सी. गुप्ता, उप सचिव

New Delhi, the 24th July, 2002

S.O. 2517.— Whereas the Central Government having been satisfied that the public interest so required has, in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S. O. No. 419 dated 29-1-2002 the Industrial Establishment Manufacturing or Producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals and Atomic Energy to be a public utility service for the purpose of the said Act, for a period of six months from the 26th February, 2002

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 26th August, 2002.

[No. S-11017/3/97-IR(PL)]

H. C. GUPTA, Dy. Secy.

नई दिल्ली, 1 जुलाई, 2002

का.प्र.2518.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 36/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-2002 को प्राप्त हुआ था।

[सं. एल-40012/272/2000-आई.प्र. (डीयू)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st July, 2002

S.O. 2518.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2001) of the Central Government Industrial Tribunal/Labour Court, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom. Department and their workman, which was received by the Central Government on 1-7-2002.

[No. L-40012/272/2000-IR(DU)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUS-
TRIAL TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No. ID 36/2001

Sh. Munish Kr. Sharma
S/o Sh. Ishwar Chander,
R/o 19, Randhir Colony,
Kunjipura Road, Karnal-132001. . . Applicant.

Versus

The General Manager,
Department of Telecom.
Telephone Colony,
Sector-8, Karnal-132001. . . Respondent.

REPRESENTATIVES :

For the Workman.—Workman in person.

For the Management.—Sh. G. C. Babbar.

AWARD

Dated, 17th June, 2002.

The Central Government, Ministry of Labour vide Notification No. L-40012/272/2000-IR(DU), dated 18th January, 2001 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the Department of Telecom. in terminating the services of Shri Munish Kumar Sharma Peon-cum-Clerk w.e.f. 13-7-99 is just and legal? If not, to what relief the workman is entitled?”

2. The applicant has filed the claim statement inter-alia pleading therein that he was appointed by the D.E.T. Admn. on the recommendation of G.M. to B.D.O. (phone) Karnal on 18-8-1998 as daily wages and the services of the workman were engaged by the SDO (phone) Chaman Garden Karnal as peon-cum-clerk and he was given the job to work all clerical work relating to telephone connection records and other file work and Shri V. P. Malik SDO has authorised the applicant to withdraw the payment of the department from the State Bank of India. He was paid Rs. 1300 per month by the department. He was also doing the work on Saturdays & Sundays. As the applicant had sent a complaint to the Central Communication Minister therefore his services were terminated on 13-7-1999 orally. He has put in more than one year of service but the management has not complied with the provisions of Sections 25-F, G and H of the I.D. Act 1947 as no notice, retrenchment compensation was paid by the management to the workman. The management has also not prepared the seniority list as required under rule 77 of the rules of 1956. Thus act of the management also constituted unfair labour practice. Thus the applicant has prayed that he be reinstated in service with continuity of service and with full back wages. He also prayed for the cost of the proceedings.

3. In the written statement, the management has taken the preliminary objection that the establishment of the management is not an 'industry'. It is pleaded that the applicant was neither engaged nor recruited according to the service rules nor any appointment letter was issued nor the services of the applicant were terminated by the management. The applicant was performing the work on need basis and some time the applicant himself acted as a petty contractor and some time he provided helper/assistant for some jobs of delivery of dak etc. He was some time providing labour to the department. He himself had not worked continuously for 240 days in a calendar year. It is also pleaded that there is no post of peon-cum-clerk in the department and the appointment in the cadre of any post has been banned by the Government of India in the year 1985. It is also pleaded that Shri V. P. Malik has never admitted the applicant as the employee of the department. It is also denied that he was drawing monthly wages. The applicant was paid the amount as per the quantum of work involved in the job performed by him. As soon as the particular work was completed he was paid for that job. It is specifically denied that he was paid Rs. 1400 on monthly basis. It is pleaded by the management that the applicant was engaged on need basis on different intervals of time for providing the labour and some time he himself was working in lieu of labourers. Thus no notice or charge sheet was required to be served as he was not covered under any section of the I.D. Act. It is also pleaded that applicant is not a workman and he has no locus standi to file the present reference. It is also pleaded that no new person has been engaged for the job in place of the applicant. As the applicant is not a workman as rule 77 of the ID Act is not attracted. It is thus prayed by the management that there is no merit in the reference and the same deserves to be rejected.

4. Replication also filed by the workman reiterating the claim made in the claim statement.

5. In evidence the applicant produced his affidavit Ex. W1 and also the documents Exs. W2 to W38 which consist of payment vouchers from the Department which are alleged to have been prepared by the applicant. The applicant also produced W39 cutting of News paper. He has also produced documents Ex. W40 to 43 authority letter which does not pertain to the applicant. The applicant in cross-examination admitted that he was not appointed by the management in writing for clerk-cum-peon post. He has admitted documents Ex. M1 to M6 which are the receipts of having received the amount for the job done on ACG 17 forum and these documents bear his signatures. Ex. M7 to Ex. M10 are also admitted as correct. He has also admitted Ex. M11 to M19 which bear his signatures and seal. It is admitted by the applicant in cross-examination that he has no letter stating that he had been appointed on monthly salary of 1400/1600 per month. He has also stated that there is no list available with him of the persons who had been appointed after his termination. It is also admitted by applicant that he has not marked his presence in any attendance register. In rebuttal the management has submitted the affidavit of V. P. Malik as Ex. M1/A and documents M2 to M19. He deposed in his cross-examination that S.D.O. has been making the payment to the labour as per the work done by them. He has deposed that applicant was working as a petty contractor. He has denied the suggestion that applicant was the employee of the department.

6. I have heard the applicant who appeared in person and also the counsel for the management and have also gone through the evidence and record of the case. The first point to be determined in this case is whether applicant is a workman under ID Act, 1947 and he is an employee of the department. The management has not denied the working of the applicant but it has been pleaded by the management that the applicant was working on contract basis and he was working as a contractor supplying the labour to the department and for getting the work done through the labour and sometime in absence of labour he himself completes the job assigned to him as a contractor. Ex. W6 shows that he received Rs. 300 on account of cleaning of office, re-setting of office record and up keeping of office and other general work and despatch of letter to post office on 16-6-1999. Ex. W16 is another receipt of Rs. 500 dated 22-9-99 on account of delivery of dak and other services provided by the applicant from 26-3-99 to 31-3-99. I have also gone through the payment receipts Ex. M1 to Ex. M19 which are for specific amounts for the specific jobs mentioned in some of the receipts in the hands of the applicant, which are not the salary under D. C. rates but it is the specific amount which was paid to the applicant. The rep. of the management has argued that there was no relationship of master and servant between the management and the applicant as there was no appointment letter issued to the applicant and there was no powers with the management to take disciplinary action against the workman as the applicant was working as contractor with the management for getting the work of specific nature to be done through his labour and for this work he was paid the specific amount as agreed between the management and the applicant.

7. The workman has argued that he was doing the work of his own and he was not a contractor registered with the management. Though he has admitted that he received the specific amount under his signatures as revealed from the receipts mentioned above for getting the specific work done for the department and he has argued that for all intents and purposes he was the employee of the department and not the contractor. He has also argued that the department is an industry under the I.D. Act. The question of 'Industry' is not pressed by the management and moreover the Hon'ble Supreme Court vide its judgement has declared the telephone department as industry. The workman has relied on the judgement of the division Bench of Hon'ble Punjab & Haryana High Court in the case of the SDO (Civil)-cum-Authority, Ambala Improvement Trust Vs. The Presiding Officer, Labour Court, Ambala 2001(1) S.C.T. 97. But this case is relating to the employees who are working on daily wage basis. In the present case, the workman was not working on daily wage basis, so this judgement is not applicable on the facts and circumstances of the present case. The workman also relied on the case law of Joginder Pal. Vs. Executive Engineer 2001(3) S.C.T. 850. This case also relates to the production of documents. In the present case the documents have been produced by the parties and also admitted by the parties to the dispute. It is admitted by the applicant under his signatures the payment receipts and preparing the official record. The applicant also produced the judgement of Hon'ble Madhya Pradesh High Court in the case of Champalal Vs. Daryabai and others 1992 A.C.J. 160 wherein it has been held by the Hon'ble High Court that if a workman agrees to work himself alongwith others by virtue of a contract then he is a workman and if he gets the work done from others he is an independent contractor. But in the present case, it is not proved that the applicant was working himself the job personally and not getting the work done from the labourer. The stand of the management was that he used to supply labour to the department and some time due to paucity of the labour he also completed the work assigned to him as contractor. Thus it is no where proved that there was relationship of master and servant and any thing existed between the department and the applicant as employer and employee, it is also not proved on the record that under whose control the applicant was working and who was supervising the work of the applicant. From the documents on the record and evidence it is nowhere proved that the applicant was working as a labourer on daily wages with the management. Rather from the documents of the applicant and the management it is amply clear that he was working as party contractor with the management for doing the specific nature of job and he was paid accordingly for the job performed by him as per the agreement between the applicant and the department. Thus I am of the considered opinion that there existed no relationship of employer and the employee between the applicant and the management of telecom department, and the management was not bound to comply with the provisions of Section 25-F G & H of the I.D. Act, 1947.

8. In view of the discussions made in the earlier paras, it is held that applicant is not workman as enunciated under the I.D. Act, 1947 and their exists

no relationship of employer and employee between the applicant and the management. Thus I hold that the action of the Department of Telecom in terminating the services of Shri Munish Kumar Sharma, peon-cum-clerk w.e.f. 13-7-1999 is just and legal and the applicant is not entitled to any relief. The Central Government be informed.

Chandigarh,
17-6-2002.

S. M. GOEL, Presiding Officer.

नई दिल्ली, 1 जुलाई, 2002

का.आ. 2519.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल वेयर हाऊसिंग कॉर्पोरेशन के प्रबंधन के संबंध में निदेशों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 9/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-2002 को प्राप्त हुआ था।

[सं. एल-42012/4/94-आई.आर. (डीयू)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st July, 2002

S.O. 2519.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/95) of the Central Government Industrial Tribunal/Labour Court Chandigarh, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Warehousing Corporation and their workman, which was received by the Central Government on 1-7-2002.

[No. L-42012/4/94-IR(DU)]
AJAY KUMAR, Desk Officer
ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 9/95

Sh. Raja Ram, S/o Sh. Nand Ram,
Kail Khera, Tehsil Fazilka, Pb. .. Applicant.

Vs.

Regional Manager,
Central Warehousing Corporation,
Sector 17, Chandigarh. .. Respondent.

REPRESENTATIVES:

For the workman: None.

For the management: Sh. Pardeep Sharma.

AWARD

Dated 12th June, 2002

The Central Government Ministry of Labour vide Notification No. L-42012/4/94-I.R.(DU) dated 12th January, 1995 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Central Warehousing Corporation, Chandigarh, in terminating the services of Shri Raja Ram Son of Shri Nand Ram w.e.f. 16-2-91 is legal and justified? If not, to what relief the concerned workman is entitled and from what date?”

2. None appeared on behalf of the workman. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution. Central Govt. be informed

Chandigarh

Dated: 12-6-2002.

S. M. GOEL, Presiding Officer

नई दिल्ली, 1 जुलाई, 2002

का.आ. 2520.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व्यास प्रोजेक्ट के प्रबंधन के संबंध में निदेशों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 18/90) को प्रकाशित करती है जो केन्द्रीय सरकार को 1-7-2002 को प्राप्त हुआ था।

[सं. एल-42012/123/89-आई.आर. (डीयू)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 1st July, 2002

S.O. 2520.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/90) of the Central Government Industrial Tribunal/Labour Court Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Beas Project and their workman, which was received by the Central Government on 1-7-2002.

[No. L-42012/123/89-IR(DU)]
AJAY KUMAR, Desk Officer
ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 18/90

Sh. Gurdial Singh
C/o General Secretary,
Nangal Bhakra Mazdoor Sangh &
Organising Secretary,
Nangal Township-140124.

Applicant.

Vs.

Executive Engineer,
D.P.H. & TLSC Division,
Beas Project Slapper.

.. Respondent.

REPRESENTATIVES:

For the workman: Sh. Surinder Sharma.

For the management: Sh. K. C. Goel with Smt.
Neeru Chadha.

AWARD

Dated: 19th June, 2002

The Central Govt. Ministry of Labour vide Notification No. L-42012/123/89-I.R.(D.U.) dated 19th January, 1990 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Beas Project Slapper in retrenching Sh. Gurdial Singh, S/o Sh. Jai Ram, Chowkidar w.e.f. 15-1-84 is justified? If not, to what relief the concerned workman is entitled and from what date?"

2. The brief facts of the case according to the applicant are that he was employed by the management of BCB (Power Wing) in work charged capacity on 22-1-1977 as tradesman mate and was converted as chowkidar in the same pay scale w.e.f. 9-8-1977 and continuously employed till 15-1-1984 when his services were retrenched after serving 30 days termination notice which was short of 10 days. No retrenchment compensation was paid nor tendered at the time of termination, thus it is pleaded that the termination of the applicant is bad. It is further alleged that new hands were recruited after the termination of the applicant and he was not called for re-employment. Juniors were retained in service, violating the provisions of the I.D. Act, 1947. Thus it has been requested that the applicant be reinstated in service with full backwages and all attendant benefits.

3. In written statement the management has taken the preliminary objection that the present reference has been raised after about six years of termination. It is pleaded that the applicant was declared surplus due to abolition of TLSC Sub Division No. II Bilaspur due to completion of work. He was retrenched from service alongwith other workers. It is pleaded that seniority was maintained at the relevant time sub divisionwise. It is further pleaded that notice of retrenchment was served as the sub division in which the workman was working ceased to exist and the applicant was retrenched according to law and due to part completion of work under Section 25-FFF. It is specifically pleaded that no junior person was retained. It was thus prayed that there was no merit in the reference and the same deserved to be dismissed.

4. Rejoinder was also filed by the applicant reiterating the claim made in the claim statement.

5. In evidence the applicant filed his own affidavit Ex. W1 evidence. In cross-examination, the applicant admitted that he had received the retrenchment compensation after three months of the termination. The applicant admitted of having received the retrenchment notice. In rebuttal the management filed the affidavit of R. C. Gupta as Ex. M1 and also the documents Ex. M2 to Ex. M4.

6. The rep. of the workman has argued that the workman had put in more than 240 days of service in one calendar year and no retrenchment compensation was paid to the applicant at the time of retrenchment. He has further argued that similar situated workmen had filed a reference in this court and they all had been ordered to be reinstated with back wages and the management filed the writ petition in the High Court and the Hon'ble High Court has ordered 75 per cent of the back wages to the workmen in the writ petition. He has argued that present applicant is similarly situated and he is also entitled to be reinstated in service with full back wages. I have considered the contention of the rep. of the workman and have also gone through the writ petition moved against the award of this Tribunal by the management. It is admitted by the workman that he was served with the notice dated 12-12-1983 vide which the applicant was informed that due to abolition of TLSC/Division No. II Bilaspur his services will be no longer required by the Beas Project w.e.f. 15-1-1984. This communication/notice is very clear that the division in which the applicant was working has been abolished and due to which his services are no longer required by the Beas Project. It is thus clear that his services were retrenched under Section 25-FFF of the I.D. Act. It is also admitted by the management that at the time of retrenchment the retrenchment compensation was not tendered but this itself is no ground for the reinstatement of the applicant in the service. The learned representative of the management has also relied on AIR 1979 Punjab & Haryana High Court judgement in the case of Sunder Singh Vs. Beas Construction Board page I wherein it has been held by the Hon'ble High Court that cases falling under Section 25-FFF payment of retrenchment compensation is not a condition precedent and it is not to be paid alongwith the discharge notice. The rep. of the workman has further argued that in the similar situated case, the workmen have been ordered to be reinstated with full back wages. I have gone through the case upon which the rep. of the workman is relying. In that case, the validity of retrenchment notice was questioned and the period of notice was to expire on 29-3-1982 but on verbal request the expiry of the notice period i.e. date was extended up to 31-3-1982 and in those circumstances it was held that as proper notice was not served, the workmen are entitled for the reinstatement. But in the case in hand, the notice was not disputed and on the scrutiny of the notice dated 12-12-1983, it is clearly mentioned that this notice shall expire on 15-1-1984, A.N. Thus I find no infirmity in the present notice. It is also admitted by the applicant in the cross-examination that he was paid the retrenchment compensation by the management after three months. It is also argued by the rep. of the workman that provisions of Section 25-H were also violated by the management by not calling him for re-employment as some new hands were recruited after 15-1-1984. But no

appointment letter or any person who was appointed by the management after 15-1-1984 has been produced in this Court nor any other document supporting the contention of the workman has been produced. Thus in the circumstances of the present case, since the workman had been retrenched due to completion of the work under Section 25-FFF of the I.D. Act, it is held that there is no infirmity in the retrenchment of the applicant and the applicant is not entitled to any relief. The reference is answered accordingly Central Govt. be informed.

18-6-2002.

Chandigarh.

S. M. GOEL, Presiding Officer

नई दिल्ली, 12 जुलाई, 2002

का. मा. 2521.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सर्वेन रेलवे, पालघाट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में लेबर-कोर्ट एर्नाकुलम के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 11-7-2002 को प्राप्त हुआ था।

[सं. एल-41012/32/1998-आई.एम. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 12th July, 2002

S.O. 2521.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway, Palghat and their workmen, which was received by the Central Government on 11-7-2002.

[No. L-41012/32/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE LABOUR COURT, ERNAKULAM

(Monday, the 27th day of May, 2002)

PRESENT :

Smt. N. Thulasi Rai, B.A.L.L.B.,

Presiding Officer

Industrial Dispute No. 2 of 1999 (Central)

BETWEEN :

The Divisional Personnel Officer,
Southern Railway, Palghat.

AND

The workman of the above concern Smt. Kalliani, C/o Secretary Southern Railway, Mazdoor Labour Union, Kozhikode.

REPRESENTATIONS :

Sri. P.M.M. Najeeb Khan,

Advocate,

Ernakulam,

Kocin-18,

.. For Management

Sri. A. X. Varghese,

Advocate,

Ernakulam.

.. For Workman

AWARD

This reference was made by the Central Government as per letter No. L-41012/32/98/IR(B-I) dated 22-1-1999. The dispute is between the Southern Railway and their workman Smt. Kalliani. The dispute referred is :—

“Whether the action of the management D.P.O., Southern Railway, Palghat in terminating the services of Smt. M. Kalliani, D/o Karitan, as ex-casual labour in the services of railway under P.W.I. Koilandi with effect from May 1984 is justified or not ? If not to what relief the workman is entitled .

2. Pursuant to notices issued from this Courts both the workman and the management appeared through counsel. Workman filed a claim statement and the management filed a written statement raising their respective claims. Thereafter no rejoinder was filed and the case was pending for adducing evidence. In spite of repeated chances no evidence was adduced by the workman.

Today when the case was taken the workman and her counsel were absent and there was no representation. Management's counsel was present. I am satisfied that the workman is not interested in prosecuting the case thereby there exists dispute between the parties at present to be adjudicated by this court.

In the result, an award is passed finding that there is no industrial dispute at present between the parties to be adjudicated by this court.

Ernakulam.

27-5-2002.

N. THULASI BAI, Presiding Officer

नई दिल्ली, 3 जुलाई, 2002

का.आ.2522:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय अजमेर के पंचाट (संदर्भ संख्या 7/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2002 को प्राप्त हुआ था।

[सं. एल-17012/2/96-आई.आर. (बी-II)]

सी. गंगाधर, अवर सचिव

New Delhi, the 3rd July, 2002

S.O. 2522.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/97) of the Industrial Tribunal-cum-LC, Ajmer as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 2-7-2002.

[No. L-17012/2/96-IR(B-II)]

C. GANGADHARAN, Under Secy.

अनुबंध

न्यायालय श्रम एवं औद्योगिक न्यायाधिकरण अजमेर (राज.)
पीठासीन अधिकारी : राजेन्द्र सिंह राठौड़, आरएचजे एस
सी. आई.टी. आर. 7/97

(रेफरेंस नं. एल 12012/सी 2/96 दिनांक 21-4-97)
सुनील शर्मा पुत्र श्री मांगी लाल बिहारी गंज, हनुमान नगर,
अजमेर—प्रार्थी

बमाम

डिवीजनल मैनेजर, भारतीय जीवन बीमा निगम, रामाडे, मार्ग,
मंडल कार्यालय, - अजमेर

—अप्रार्थी

उपस्थित : सुश्री द्रौपदी भंभानी, विद्वान् अधिवक्ता—प्रार्थी
श्री अशोक माधुर, विद्वान् अधिवक्ता —अप्रार्थी
दिनांक 16-5-02

अवार्ड

1. केन्द्र सरकार द्वारा यह विवादवास्ते अधिनिर्णायार्थ
इस न्यायालय को प्रेषित किया गया है :—

“आया भारतीय जीवन बीमा निगम अजमेर के मैनेज-
मेंट द्वारा सुनील शर्मा पुत्र मांगी लाल शर्मा को 10-1-95
से सेवा मुक्त करना बंध एवं उचित है ? यदि नहीं तो
श्रमिक किस राहत को पाने का अधिकारी है ?

2. प्रार्थी ने अपने स्टेटमेंट ऑफ क्लेम्स में बताया है कि
11-5-94 से 10-1-95 तक व लगातार प्रार्थी के अधीन

कार्य करता रहा। इस बीच उसने 11-5-94 से 15-8-94 तक सेविंस बचत में फाइलिंग का कार्य किया। 16-8-94 से 29-11-94 तक क्लेम डिपार्टमेंट में रिकार्ड शिफ्टिंग का कार्य किया। 30-11-94 से 10-1-95 तक बिक्रय विभाग में डायरी कैलेंडर आदि देने के लिए अधिकारी श्री टंडन के साथ दूर पर कार्य किया। दि. 30-11-94 को राष्ट्रीय हॉस्पिटल में भी कचहरी रोड बाव पर प्रार्थी ने कार्य किया इस प्रकार 240 दिवस से अधिक विपक्षी के अधीन कार्य किया तथा वोटर मैन के रजिस्टर में उसकी उपस्थिति भी प्रतिदिन दर्ज की जाती रही व प्रतिमाह वेतन बाउचर द्वारा उसे दिया जाता था। प्रार्थी ने 10-5-94 से 1-1-95 तक की उपस्थिति पंजिका बाउचर बुक मेजर रजिस्टर आदि की मांग श्रम विभाग के समक्ष प्रस्तुत प्रार्थना पत्र में की थी परन्तु विपक्षी द्वारा उक्त दस्तावेज पेश नहीं किये गये बल्कि श्रम विभाग ने यह जवाब पेश किया कि प्रार्थी ने विभाग के अधीन कभी भी कार्य नहीं किया है। प्रार्थी को विपक्षी के मैनेजर ने 29-10-94 की एक पत्र जारी किया था जो उसे भुगतान किये जाने के संबंध में स्पष्ट प्रमाण देता है अप्रार्थी ने जिस पद पर प्रार्थी कार्य करता था उस पद को समाप्त नहीं किया बल्कि वह पद कायम है व उक्त पद पर प्रार्थी से कनिष्ठ कर्मचारी की नियुक्ति की जा रही है। प्रार्थी को सेवा मुक्त करते समय कोई नोटिस व मुआवजा या नोटिस वेतन नहीं दिया गया इस प्रकार मन माने तरीके से औद्योगिक विवाद अधि. के प्रावधानों की अवहेलना कर प्रार्थी को सेवा मुक्त कर दिया। प्रार्थी को कोई सुनवाई का अवसर तक नहीं दिया तथा अप्रार्थी के यश उक्त कृत्य औद्योगिक विवाद अधि. की धारा 25 एक तथा संविधान के अनुच्छेद 14 व 16 व 39 डी के विरुद्ध होने से उसकी मौखिक सेवा मुक्ति निरस्त किये जाने योग्य है। प्रार्थी ने सेवा मुक्ति के मौखिक आदेश को निरस्त करने उसे सेवा में बहाल किये जाने तथा समस्त वेतन लाभ परिलाभ व सेवा संबंधी लाभ दिलाये जाने की मांग की है।

प्रार्थी ने अपना शपथ पत्र प्रस्तुत किया है जिस पर विपक्षी ने जिरह की है। प्रार्थी की ओर से जो प्रलेख पेश किए गए हैं उनमें विपक्ष के वरिष्ठ मंडल प्रबंधक द्वारा श्रम विभाग को प्रस्तुत जवाब प्रदर्श-1, विपक्षी द्वारा उसे 800/-रु. का भुगतान संबंधी पत्र 29-10-94 प्रदर्श डब. 2, पेमेंट बाउचर प्रदर्श डब. 3, श्रम विभाग को प्रार्थी द्वारा की गई शिकायत प्रदर्श डब. 4, केन्द्र सरकार द्वारा भेजे गए विवाद प्रदर्श डब. 5, प्रस्तुत किया है।

3. अप्रार्थी की ओर से वरिष्ठ मंडल प्रबंधक भारतीय जीवन बीमा निगम श्री जी.एल. राव ने क्लेम का प्रत्युत्तर पेश किया है। इस जवाब में बताया है कि प्रार्थी व विपक्ष के बीच कभी भी श्रमिक व नियोजक का संबंध नहीं रहा। यदि किसी विशेष कार्य के तहत विशेष अनुबंध के लिए प्रार्थी को रखा गया था तो इसमें श्रमिक व नियोजक का संबंध स्थापित नहीं होता है। प्रार्थी को वाटरमैन की नियुक्ति नहीं दी गई अतः उसकी उपस्थिति किसी पंजिका

में दर्ज करने का प्रश्न ही उत्पन्न नहीं होता है। वाटरमैन की नियुक्ति पूर्ण तथा स्थाई वेतनभोगी की होती है परन्तु प्रार्थी ने कभी भी श्रमिक की हैसियत से विपक्षी से यहां कार्य नहीं किया प्रदर्श -2 में इस बात का स्पष्ट उल्लेख है कि विशेष अनुबंध के तहत किए गए कार्य की घन राशि स्वीकृत की गई थी तथा विशेष कार्य समाप्त होने पर उस विशेष कार्य का भुगतान प्रार्थी को कर दिया गया है। विपक्षी के यहां सभी स्वीकृत पदों पर योग्य उम्मीदवारों का चयन रोजगार कार्यालय से प्राप्त सूची, एवं विज्ञापन प्रकाशित कर प्रतियोगी परीक्षा के द्वारा किया जाता है। प्रार्थी द्वारा कभी भी निर्धारित प्रक्रिया के अनुसार विपक्षी के यहां कोई आवेदन पत्र प्रस्तुत नहीं किया गया प्रार्थी जब विपक्षी के यहां नियोजन में रहा ही नहीं है तो औद्योगिक विवाद के तहत मुआवजा देने व नोटिस बिना कार्यमुक्त कर देने का प्रश्न ही नहीं उठता है। अतः प्रार्थी का विवाद खारिज किया जावे।

अप्रार्थी की ओर से श्री द्वारकाप्रसाद सिंहल ने शपथ पत्र प्रस्तुत किया है जिस पर प्रार्थी द्वारा जिरह की गयी है। प्रलेखीय साक्ष्य में चार व्यक्तियों द्वारा भुगतान दिलाने संबंधी पत्र प्रदर्श एम-1, मई 94 में दस दिवस प्रार्थी द्वारा कार्य करने संबंधी विवरण प्रदर्श एम-2, प्रस्तुत किए हैं।

4. मैंने उभयपक्ष की बहस सुनी एवं पत्रावली पर उपलब्ध साक्ष्य एवं सामग्री का अवलोकन किया। इस विवाद के न्याय निर्णय हेतु निम्नांकित बिन्दु सहायक होंगे :-

1. आया प्रार्थी व विपक्ष के बीच श्रमिक व नियोजक का संबंध स्थापित होता है ?

2. आया प्रार्थी ने विपक्षी संस्थान में 240 दिवस निरंतर सेवा की व इस कारण धारा-25एफ औद्योगिक विवाद अधि. के अनुपालना उसकी छंटनी करने के लिए आवश्यक थी ?

3. अनुतोष

5. प्रत्येक बिन्दु पर हमारा निर्णय निम्नानुसार है :-

बिन्दु संख्या-1 :- मौजूदा मामले में भारतीय जीवन बीमा निगम औद्योगिक विवाद अधि. की धारा 2(जी) के अधीन नियोजक है एवं प्रार्थी धारा 2(एस) में परिभाषित कर्मकार की संज्ञा में आता है। प्रार्थी की सेवामुक्ति धारा 2(घो घो) में परिभाषित छंटनी की संज्ञा में आती है अथवा नहीं यह तथ्य दोनों पक्षों के अभिकथनों एवं दस्तावेजात के आधार पर देखा जाना है।

प्रार्थी का कहना है कि 11-5-94 से 1-1-95 तक उसने लगातार प्रार्थी के अधीन कार्य किया था। इस अवधि में 11-5-94 से 15-8-94 तक सेविंग्स बचत में फाइलिंग का कार्य किया तथा 16-8-94 से 29-11-94 तक क्लेम डिपार्टमेंट में रेकार्ड छंटनी का कार्य किया एवं

उसके पश्चात् 30-11-94 से 10-1-95 तक विक्रय विभाग में डायरी कैलेंडर आदि देने के लिए भीलवाड़ा कोटा व अन्य स्थानों पर निगम अधिकारी श्री टंडन के साथ टयूर पर रहा। प्रार्थी का कहना है कि उसने 240 दिवस से अधिक दिवस तक कार्य किया है। उसकी उपस्थिति रजिस्टर में अंकित की जाती थी तथा प्रतिमाह का वेतन एलआईसी के कैश काउंटर से बाउचर के अनुसार किया जाता था। अप्रार्थी एलआईसी का कहना है कि प्रार्थी उसके नियोजन में कभी भी नहीं रहा बल्कि 93-94 के अकाउंट्स की क्लोजिंग के समय प्रबंधक द्वारा यह पाया गया कि कुछ रेकार्ड को सुरक्षा पूर्वक नष्ट करना है व इसके लिए प्रार्थी व अन्य को रु. 4000 के पारिश्रमिक के अनुबंध के रूप में कार्य दिया गया था रु. 3200 प्रार्थी को पहले ही भुगतान कर दिया गया व शेष काम संतोषजनक कार्य किए जाने के पश्चात् प्रार्थी को रु. 800 का भी भुगतान विपक्षी द्वारा कर दिया गया जिसकी रसीद प्रार्थी ने विपक्षी को दे दी अप्रार्थी द्वारा प्रस्तुत एकजीबिट एम. 1 में साफ तौर पर यह अंकित है कि चालान फाइल करने व पुराना रेकार्ड समाप्त करने के लिए जो ठेका रु. 4000 में दिया गया था वह कार्य पूरा कर लिया है अतः उस कार्य का भुगतान दिलाया जावे। प्रार्थी से इस संबंध में जब जिरह की गयी तो उसने प्रदर्श एम-1 पर अपने हस्ताक्षर होना स्वीकार किया है। प्रार्थी ने प्रदर्श डब. 2 के अनुसार रु. 4000 देना तय होने की बात भी स्वीकार की। उसने आगे बताया कि प्रदर्श डब. 2 के जरिए उसे रु. 800 देने के आदेश हुए थे जो उसने प्रदर्श डब. 3 प्राप्त कर लिए। प्रार्थी ने यह भी स्वीकार किया कि फाइलिंग का कार्य व छंटनी का कार्य उससे ठेके पर कराया था व इन कार्यों का भुगतान प्रदर्श-2 के जरिए कर दिया था निर्देश वशिष्ठ भी उसी के साथ काम करता था। विपक्षी निगम के मैनेजर (एस. एस. एस.) की कार्यालय टिप्पणी 9-6-94 के देखने से यह स्पष्ट होता है कि चार अस्थाई आकस्मिक श्रमिक करीब एक माह के लिए रखने की अनुशंसा रेकार्ड नष्ट करने के कार्य तथा फाइलिंग कार्य करने के लिए व ट्रेजरी चालान बंडल जो खुले थे उन्हें फाइल करने के लिए रखे जाने थे। इसके पश्चात् कार्यालय टिप्पणी 29-10-94 जो प्रदर्श डब. 2 है के अवलोकन से स्पष्ट है उक्त सभी कार्य आंशिक रूप से सम्पन्न करने पर रु. 3200 का भुगतान कर दिया गया था एवं शेष कार्य की भी पूर्ति हो जाने पर बकाया पेमेंट रु. 800/- श्रमिक सुनील कुमार को कर देने की टिप्पणी अंकित की गई उक्त बकाया रु. 800 प्रार्थी को प्रदर्श डब. 3 के जरिए 31-10-94 को कर दिया गया। अतः प्रार्थी का यह कहना कि 11-5-94 से 15-8-94 तक सेविंग्स बचत में उसने फाइलिंग का कार्य किंग किंग भी दस्तावेज से न तो प्रकट ही हो सका है व न ही साबित होता है। इसी प्रकार 16-8-94 से 29-11-94 तक क्लेम डिपार्टमेंट में रेकार्ड छंटनी के कार्य करने की बात भी जिस कारण गलत हो जाती है क्योंकि 3200 रु. के

भुगतान के बाद शेष रु. 800 का अंतिम भुगतान भी प्रदर्श डब. 3 के माध्यम से 31-10-94 को ही कर दिया गया था, तब 31-10-94 से 29-11-94 तक प्रार्थी ने किस आधार पर रेकार्ड छंटनी का कार्य जारी रखा इस बाबत कोई साक्ष्य न तो वह अपने बयानों से प्रकट कर सका है व न ही किसी आलेखीय साक्ष्य से ही प्रकट हो पाता है।

प्रदर्श एम-2 उपस्थिति पंजिका की फोटो प्रति है। इस प्रति में सुनील पुत्र पूनमचंद को 19-5-94 से 28-5-94 की अवधि में दस दिन के लिए कार्य करना बताया गया है। प्रार्थी ने प्रदर्श एम-2 पर ए से बी हस्ताक्षर उसके होने से इंकार किया है उसका कहना है कि निगम अधिकारी तामरा सा. श्रमिकों के नाम पूछते और खुद हस्ताक्षर कर देते थे। प्रार्थी का उक्त कथन प्रदर्श एम-2 पर हुए विभिन्न दैनिक वेतन भीगी श्रमिकों के अवलोकन मात्र से एकदम गलत साबित हो जाता है क्योंकि अलग-अलग श्रमिकों ने अपने हस्ताक्षर अपनी हस्तलिपि में कर रखे हैं तथा तामरा सा. द्वारा सभी श्रमिकों के बनावटी हस्ताक्षर कर देना बिल्कुल भी दिखाई नहीं देता है।

अप्रार्थी के गवाह द्वारकाप्रसाद सिंह ने स्पष्ट किया है कि प्रदर्श एम-2 में जो सुरेश कुमार है उसके पिता का नाम पूनमचंद है। उक्त सुरेश पुत्र पूनमचंद प्रार्थी सुनीलकुमार पुत्र मांगीलाल से बिल्कुल भिन्न व्यक्ति है। सुनील पुत्र पूनमचंद को भी केवल दस दिन के लिए रखा गया था तथा जिन श्रमिकों को दैनिक वेतन पर रखा जाता था उनकी उपस्थिति के संबंध में रजिस्टर में उपस्थिति दर्ज की जाती थी। उक्त प्रार्थी सुनील कुमार पुत्र मांगीलाल कभी भी निगम के नियोजन में नहीं रहा बल्कि सुनील पुत्र पूनमचंद को पूर्णतः अस्थायी वाटरमैन के रूप में मई 94 में दस दिन के लिए कार्य पर रखा गया। प्रार्थी द्वारा सहयोग श्रम आयुक्त के समक्ष जो परिवाद पेश किया गया था उसके जवाब में भी यही तथ्य निगम को और से बताये गये थे।

प्रार्थी का यह भी तर्क है कि समझौता अधिकारी के समक्ष हुई कार्यवाही में प्रबंधक पक्ष को हिवायत दी गयी थी कि वे कर्मचारी के रिकार्ड की जांच कर आगामी सुनवाई पर रिकार्ड सहित उपस्थित होवे इस पर 29-12-95 को प्रबंधक पक्ष को और से केवल मात्र आंशिक रिकार्ड ही प्रस्तुत किया गया जिसका आशय प्रार्थी द्वारा रिकार्ड नष्ट करने व फाइलिंग के कार्य के लिए रु. 4000-ठेके पर कार्य कराना एवं कार्य संपन्न होने पर भुगतान कर देने से संबंधित रिकार्ड तक ही सीमित रखने का था। प्रार्थी द्वारा 11-5-94 से अलग-अलग अवधि में 10-1-95 तक जो कार्य किये गये उससे संबंधित रिकार्ड जानबूझकर प्रस्तुत नहीं किया गया। प्रार्थी का यह भी कहना है कि उसने न्यायालय में 1-3-2002

को एक आवेदन प्रस्तुत कर समस्त रिकार्ड न्यायालय के समक्ष प्रस्तुत करने की मांग की थी। इस प्रार्थना पत्र पर दि. 4-4-2002 के आदेशानुसार समझौता अधिकारी के समक्ष हुई कार्यवाही से संबंधित रिकार्ड को तलब करने पर अप्रार्थी ने कोई आपत्ति न होना व्यक्त किया परन्तु प्रार्थना पत्र 19-3-2002 के अंतर्गत चाहे गये अन्य दस्तावेजात तलब करने के संबंध में जाहिर किया कि वे उसका कोई जवाब नहीं देना चाहते अपितु बहस के समय एवं अंतिम निस्तारण के समय इसका निर्णय न्यायालय द्वारा कर दिया जावे। प्रार्थी का कहना है कि चूंकि अप्रार्थी ने जानबूझकर मस्टर रोल, टयूर प्रोग्राम से संबंधित विवरण, पुष्कर मेले में लगाई गई प्रदर्शनों में कार्यरत कर्मचारियों की सूची तथा वाउचर्स के तहत किये गये भुगतान का रजिस्टर आदि पेश नहीं किया है। अतः अप्रार्थी के विरुद्ध विपरीत अवधारणा लगाई जावे व प्रार्थी को ऐसी अवधारणा का लाभ दिया जावे। प्रार्थी ने चूंकि अपने शपथ पत्र में 240 दिन लगातार कार्य कर देना बताया है अतः इसके विपरीत तथ्य साबित करने का भार अप्रार्थी नियोजक पर शिफ्ट हो जाता है एवं बारंबार निवेदन के बावजूद यदि नियोजक मस्टर रोल उपस्थिति पंजिका पेश नहीं करता है तो यह निष्कर्ष श्रमिक के पक्ष में निकाला जा सकता है कि उसने 240 दिन लगातार कार्य किया है। प्रार्थी द्वारा अर एल अर 2000 (3) पृष्ठ 447 स्पूनिंसिपल कॉपोरेशन कोटा बनाम रामचंद्र श्रुंगी के विनिर्णय पर अपना उक्त तर्क आधारित रखा है। इसके वितर्क में अप्रार्थी ने बहस के दौरान स्पष्ट किया है कि जब प्रार्थी ने एक भी दिन उसके नियोजन में कार्य नहीं किया है तब उससे संबंधित किसी भी प्रकार का रिकार्ड होने की कोई स्थिति ही उत्पन्न नहीं होती है। प्रार्थी के संबंध में जो ठेके पर कार्य कराने एवं उसका भुगतान कर देने से संबंधित रिकार्ड था वह उसके द्वारा प्रथमतः समझौता अधिकारी के समक्ष हुई कार्यवाही में भी प्रस्तुत कर दिया गया था एवं न्यायालय के समक्ष भी प्रस्तुत किया जा चुका है। इसके अलावा अप्रार्थी के पास प्रार्थी के कार्य संबंधी कोई रिकार्ड जब है ही नहीं तो उसे पेश करने का प्रश्न ही कहाँ उत्पन्न होता है। उक्त प्रतिबंधी तक पर विचार करने के उपरांत हमारे मतानुसार जब 9-6-94 को सर्वप्रथम चार श्रमिकों को रिकार्ड नष्ट करने व फाइलिंग के कार्य करने के लिए कार्यालय टिप्पणी बनी थी एवं उस टीप के स्वीकृत होने पर प्रार्थी के साथ साथ अन्य तीन आकस्मिक श्रमिकों ने भी आवेदन प्रदर्श एम 1 पेश करते हुए बताया था कि ठेके पर दिया हुआ कार्य उनके द्वारा पूरा कर लिया गया है व ठेके की राशि का भुगतान भी प्राप्त कर लेना जब प्रार्थी स्वीकार करता है तो 10-6-94 से पूर्व एवं 30-10-94 के पश्चात् प्रार्थी के निगम के अधीन किसी भी प्रकार के नियोजन की बात सामने नहीं आती। अतः अप्रार्थी के विरुद्ध किसी भी प्रकार की विपरीत अवधारणा उत्पन्न करने का कोई समुचित एवं विधि अनुरूप आधार नहीं रहता है।

प्रार्थी द्वारा डब्ल्यू एल मी (राज.) 2002 (1) पृष्ठ 296 अरावली क्षेत्रीय ग्रामीण बैंक सवाईमाधोपुर बनाम पीठासीन अधिकारी के आधार पर यह बताया गया है कि औद्योगिक विवाद अधि. की धारा 25ज के अन्तर्गत जिम् कर्मकार ने कैलेंडर वर्ष में 240 दिवसों तक कार्य न भी किया हो तब भी नियम 77 व 78 के उपबंधों के लाभ का वह हकदार ही जाता है तथा यदि ऐसे कर्मकार की सेवा समाप्त के पश्चात् कोई व्यक्ति नियुक्त किया गया हो तो कर्मकार पुर्ननिर्भोजन का हकदार ही जाता है। हस्तगत मामले में उक्त विनिर्णय के सिद्धांत लागू होना नहीं माना जा सकता है क्योंकि प्रार्थी ने केवल एक विशेष कार्य के लिए ठेके पर निर्धारित राशि के विरुद्ध कार्य किया था जिसके संपन्न हो जाने पर भुगतान संपूर्ण रूप से प्राप्त भी कर लिया था। दूसरा प्रार्थी ने अपने स्टेटमेंट ऑफ क्लेमस के मद सं. 8 में केवल इतना ही अंकित किया है कि उसने कनिष्ठ कर्मचारी एवं नए कर्मचारी की नियुक्ति उसकी सेवा मुक्ति पश्चात् की जा रही है। प्रार्थी ने अपने बयानों में भी इस बात का कोई खुलासा नहीं किया है कि उससे कौन व्यक्ति कनिष्ठ था जिसे सेवा में रहने दिया गया एवं किस व्यक्ति को उसकी सेवामुक्ति पश्चात् नियुक्ति दी गई अतः उक्त विनिश्चय में प्रार्थी को कोई मदद नहीं मिलती।

मौजूदा मामले में जिस प्रकार के तथ्य सामने आते हैं उससे यह निष्कर्ष निकाला जा सकता है कि प्रार्थी की तथाकथित सेवा मुक्ति औद्योगिक विवाद अधि. की धारा 2(ओओ) के अन्तर्गत परिभाषित छंटनी की संज्ञा में नहीं आती है बल्कि धारा 2(00) (बीबी) के अन्तर्गत परिष्कृत रूप से ठेके पर कराए गए कार्य के संपादित होने पर स्वतः समाप्त हो जाने की संज्ञा में आती है। प्रार्थी द्वारा (1) आरएलआर 2000 (3) पृष्ठ 693 आरएसआरटीसी बनाम मौ. युसुफ. (2) आर एलआर 1999 (1) पृष्ठ 250 डिप्टी चीफ लाइफ वार्डन भरतपुर बनाम जज लेखर कोर्ट भरतपुर (3) आर एल आर 1999 (1) पृष्ठ 251 जेडीए/सुरेशचंद विनिश्चय जो पेश किए गए हैं उन विनिश्चयों एवं मौजूदा मामले के तथ्यों में भारी भिन्नता है अतएव इनके सिद्धांत हस्तगत मामले के तथ्यों पर लागू होना नहीं माना जा सकता है।

अतः यद्यपि प्रार्थी व अप्रार्थी के बीच के श्रमिक एवं नियोजक के संबंध स्थापित होते हैं परंतु प्रार्थी की तथाकथित सेवामुक्ति छंटनी की संज्ञा में नहीं मानी जा सकती है। बिन्दु सं. 1 का निस्तारण उक्त निष्कर्ष के साथ किया जाता है।

बिन्दु सं. 2:- हमने बिन्दु सं. 1 के अन्तर्गत साक्ष्य एवं विधि की पूर्ण विवेचन व व्याख्या करने के उपरान्त यह निष्कर्ष निकाला है कि प्रार्थी द्वारा विपक्षी के अधीन 240 दिन निरन्तर सेवा करने का कोई प्रमाण नहीं है।

उसकी तथाकथित सेवा मुक्ति औद्योगिक विवाद अधि. की धारा 2(00) (बीबी) के अन्तर्गत है।

बिन्दु सं. 2 का निस्तारण प्रार्थी के विरुद्ध नय किया जाता है।

आदेश

बिन्दु सं. 3 (अनुतोष) :- प्रार्थी अपने क्लेम के अन्तर्गत किसी भी प्रकार का अनुतोष प्राप्त करने का अधिकारी नहीं माना जाता है। अतः उसका क्लेम खारिज किया जाता है। दोनों पक्ष खर्चा स्वयं वहन करेंगे।

अवार्ड आज दि. 16-5-2002 को लिखाया जाकर खुले न्यायालय में सुनाया गया। अवार्ड की प्रति नियमानुसार केन्द्र सरकार को वास्ते प्रकाशनार्थ प्रेषित की जावे।

राजेन्द्र सिंह राठौड़, न्यायाधीश

नई दिल्ली, 3 जुलाई, 2002

का.आ.2523:-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएण्टल बैंक आफ कामर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अतिक्रमण/श्रम न्यायालय अजमेर के पंचाट (संदर्भ संख्या 2/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-07-02 को प्राप्त हुआ था।

[सं. एल-12012/242/98-आई.आर. (बी-II)]

सी. गंगाधरन, अवसर सचिव

New Delhi, the 3rd July, 2002

S.O. 2523.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/1999) of the Industrial Tribunal-cum-LLC, Ajmer as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Oriental Bank of Commerce and their workman, which was received by the Central Government on 2-7-2002.

[No. L-12012/242/98-IR(B-II)]

C. GANGADHARAN, Under Secy.

अनुबंध

न्यायालय श्रम एवं औद्योगिक न्यायाधिकरण, अजमेर (राज.)

पीठासीन अधिकारी : राजेंद्र सिंह राठौड़, आरएचजेएस

सी.एल. सी. आर. 2/1999

[रिफरेंस नं एल 12012/242/98-आईआर (बी)-II
दि. 31-3-1999]

श्री जितेंद्र कुमार सुपुत्र श्री मोती लाल भुतपूर्व सफाई कर्मचारी ओरिएण्टल बैंक ऑफ कामर्स, मदनगंज किशनगढ़ एवं निवासी गोपाल बिल्डिंग के पीछे म. नं. 7 मदनगंज किशनगढ़ जिला अजमेर जिरिये केन्द्रीय अध्यक्ष, अखिल भारतीय सफाई कर्मचारी संघ राज. सेंट्रल बैंक ऑफ इंडिया, आकाशवाणी के पास एम.आई. रोड, जयपुर। प्रार्थी

बनाम

बी रोजनल मैनेजर ओरिएण्टल बैंक आफ कामर्स आनन्द भवन, शाखा किशनगढ़ जिला अजमेर अप्रार्थी

उपस्थित : श्री पी. डी. खन्ना, विद्वान अधिवक्ता, प्रार्थी
: श्री एम.सी. जेन, विद्वान अधिवक्ता, अप्रार्थी

दिनांक : 10-6-2002

अर्वाड

1. केन्द्र सरकार के श्रम विभाग से निम्नांकित विवाद न्याय निर्णयन हेतु प्राप्त हुआ :

"आया ओरिएण्टल बैंक ऑफ कामर्स, किशनगढ़ के मैनेज-मेंट का श्रमिक जितेंद्र कुमार पूर्व अंशकालीन सफाई कर्मचारी जिसकी निरन्तर सेवा 240 दिन मार्च 96 से फरवरी 97 के बीच थी को 26-7-97 से औद्योगिक विवाद अधि. की धारा 25एफ की अनुपालना किये बगैर सेवा मुक्त कर देना एवं उक्त श्रमिक जितेंद्र कुमार की सेवाओं को नियमित नहीं करने का कृत्य वैधानिक व औचित्य पूर्ण है ? यदि नहीं तो श्रमिक किस राहत को पाने का अधिकारी है ?

2. श्रमिक प्रार्थी द्वारा स्टेटमेंट ऑफ क्लेम्स में यह बताया गया है कि 20-3-96 को र. 10 प्रतिदिन की दर से अप्रार्थी के अधीन दैनिक वेतन भोगी के रूप में नियुक्त हुआ था तबपरांत दिसम्बर 96 से 26-7-97 तक उसे र. 25 प्रतिदिन की दर से भुगतान हुआ। श्रमिक ने 20-3-96 से 27-7-97 तक कुल 461 दिवस कार्य किया। इस प्रकार श्रमिक ने 240 दिन से भी अधिक कार्य किया। इस प्रकार रविवार व अन्य अवकाश नहीं जोड़े गये। अप्रार्थी ने बगैर कोई कारण बताये तथा बगैर नोटिस दिये। मौखिक आदेश द्वारा 26-7-97 को प्रार्थी की सेवायें समाप्त कर दी तथा छंटनी नोटिस मुभावजा भी नहीं दिया। प्रार्थी ने 24-6-97 को समझौता अधिकारी के समक्ष परिचायक पेश किया। जिसमें 1-9-97 को अप्रार्थी ने जवाब देकर बताया कि प्रार्थी को सफाई का ठेका दिया गया था व उसकी किसी प्रकार नियुक्ति नहीं की गयी थी। अप्रार्थी ने यह भी जवाब दिया कि नयी भर्ती की प्रक्रिया अपनायी गयी थी जिसके तहत रोजगार कार्यालय से नाम मंगवाये गये थे। प्रार्थी का नाम आज भी रोज-

गार कार्यालय में दर्ज है व उसी के आधार पर प्रार्थी को अस्थाई दैनिक वेतन भोगी के रूप में नियुक्ति दी गयी थी। अप्रार्थी के इस जवाब के प्रत्युत्तर में प्रार्थी ने 10-12-97 को जवाबुल जवाब भी पेश किया। समझौता अधिकारी ने असफल वार्ता प्रतिवेदन 21-9-98 को प्रेषित कर दिया जिसके अन्तर्गत सरकार द्वारा उक्त रेफरेंस प्राप्त हुआ प्रार्थी का निवेदन है कि उसका सेवा पृथक्करण का मौखिक आदेश 26-7-97 निरस्त किया जावे व इसी दिनांक से नियमित स्थाई सफाई कर्मचारी के पद पर मय पिछले पूर्ण वेतन सहित बहाल किया जावे तथा बहाल करते हुए उसे स्थाई वेतन श्रृंखला विलायी जावे। पिछले पूर्ण वेतन पर 18 प्रतिशत ब्याज होने की तिथि तक दिलाई जाने की मांग की है व बाद खर्चा भी अप्रार्थी से दिलाये जाने का अनुरोध चाहा है।

प्रार्थी जितेंद्र कुमार ने स्टेटमेंट ऑफ क्लेम्स की लाईट में अपना शपथ पत्र भी प्रस्तुत किया है जिस पर विपक्षी पक्ष ने जिरह की है। प्रार्थी ने डब. 1 लगायत डब. 2 प्रलेख भी प्रस्तुत किये हैं।

3. अप्रार्थी बैंक की ओर से स्टेटमेंट ऑफ क्लेम्स का प्रत्युत्तर इस आशय का पेश हुआ है कि प्रार्थी उसका सफाई कर्मचारी नियुक्तशुदा कभी भी नहीं रहा। इस कारण मालिक व कर्मचारी के संबंध नहीं रहे। प्रार्थी ने लगातार 250 दिन कार्य भी नहीं किया है। अप्रार्थी बैंक राष्ट्रीयकृत बैंक होने के कारण नियोजन के लिए निर्धारित प्रक्रिया अपनाती है। पूर्ण कालीन व अंशकालीन कर्मचारियों की नियुक्ति भारत सरकार द्वारा जारी निर्देशों के अनुसार रोजगार कार्यालय के माध्यम से सक्षम अधिकारी द्वारा की जाती है। प्रार्थी का नाम अभी रोजगार कार्यालय से नहीं आया व इस कारण उसको किसी भी साक्षात्कार में शामिल करने का प्रश्न ही नहीं उठता है। प्रार्थी को कभी कर्मचारी के पद पर नियुक्त ही नहीं दी गयी तो उसे नोटिस दिये जाने का व स्पष्टीकरण मांगने का प्रश्न ही नहीं उठता है। अप्रार्थी ने अपने विशेष कथन में इस बात पर भी जोर दिया है। अल्प समय में अंशकालीन सफाई के कार्य की आवश्यकता पड़ने पर दैनिक पारिश्रमिक पर ठेके से कार्य कराया जाता था। परिसर की सफाई के पश्चात प्रार्थी अन्यत्र कार्य करने के लिए स्वतंत्र था एवं दूसरे दिन आने के लिए बड़ी बाध्य नहीं था। इस कारण अप्रार्थी व प्रार्थी के बीच नियोजक व श्रमिक का कोई संबंध नहीं था। अतः स्टेटमेंट ऑफ क्लेम्स निरस्त किये जाने योग्य है।

अप्रार्थी की ओर से श्री दिलीप खेमवंशानी एवं श्री अमर सिंह राठौड़ ने शपथ पत्र प्रस्तुत किये। उक्त दोनों में केवल श्री अमर सिंह राठौड़ ही जिरह के लिए उपलब्ध हो सका। अतः केवल इसी गवाह की साक्ष्य पढ़ी जा सकती है। अप्रार्थी की ओर से कोई दस्तावेजी साक्ष्य प्रस्तुत नहीं हुई है।

4. उक्त औद्योगिक विवाद के न्याय निर्णयन हेतु निम्नांकित बिन्दु सुसंगत होने से निर्मित किये गये:—

(1) आया प्रार्थी अंशकालीन कर्मचारी होने के कारण धारा 2ए औद्योगिक विवाद अधि. परिभाषा

में कर्मकार माना जा सकता है अथवा नहीं ? यदि हां तो क्या प्रार्थी की मौखिक सेवामुक्ति करने से पूर्व धारा 25एफ औद्योगिक विवाद अधिनियम की अनुपालना आवश्यक थी अथवा नहीं एवं क्या अप्रार्थी द्वारा ऐसी अनुपालना नहीं करने पर श्रमिक की सेवामुक्ति अवैध व अनुचित करार दी जा सकती है अथवा नहीं ?

- (2) क्या प्रार्थी की सेवामुक्ति के पश्चात् ही उसमें कनिष्ठ अंशकालीन कर्मचारी को कार्य पर जारी रखा गया एवं क्या अप्रार्थी बैंक ने नयी भर्ती करने के समय अप्रार्थी को नियमित सेवा में प्रवर्तन दिये जाने से उसे बर्चित रखा एवं इस प्रकार धारा 25जी व एच औद्योगिक विवाद अधिनियम की अवहेलना की ?

(3) अनुतोष ?

5. उभयपक्ष की बहस सुनी गयी एवं पत्रावली का अवलोकन किया गया। उपरोक्त बिन्दु पर हमारा न्याय-निर्णयन निम्न प्रकार है :—

बिन्दु संख्या-1 :—प्रार्थी के क्लेम एवं शपथ कथन से यह प्रकट होता है कि 20-3-96 से दिसम्बर, 96 तक लगातार रु. 10/- प्रतिदिन की दर से एवं दिसम्बर 96 से 26-7-97 तक रु. 25 प्रतिदिन की दर से उसने दैनिक मजदूरी पर लगातार अप्रार्थी बैंक में अंशकालीन सफाई कर्मचारी के रूप में अपनी सेवाएँ अर्पित की। इस प्रकार प्रार्थी ने कुल 461 दिन नियमित रूप से सफाई कर्मचारी का कार्य किया। इसके विपरीत अप्रार्थी बैंक का कहना है कि प्रार्थी ने कभी भी लगातार 250 दिन कार्य नहीं किया बल्कि जब भी आवश्यकता होती थी तो उसे दैनिक मजदूरी पर अंशकालीन रूप से रखा जाता था एवं वह दूसरे दिन सफाई के कार्य हेतु आने के लिए बाध्य नहीं था। उस पर बैंक के अधिकारी का नियंत्रण या सुपरवाजन नहीं था बल्कि वह अपने ठेके पर किये गये कार्य को संपन्न करने के बाद तयशुदा पारिश्रमिक प्राप्त करता था। बैंक के गवाह श्री अमरसिंह राठी का बयान है कि प्रार्थी को रोजाना पारिश्रमिक दिया जाता था एवं वाउचर पर उसके हस्ताक्षर रोजाना कराये जाते थे। उक्त गवाह ने यह भी माना है कि वह वाउचर साथ नहीं लाया बल्कि आवश्यकता पड़ने पर बैंक द्वारा प्रस्तुत किये जा सकते थे। उक्त वाउचर के द्वारा अप्रार्थी के इस तर्क की पुष्टि हो सकती थी कि वास्तव में क्या दिन-प्रतिदिन श्रमिक को भुगतान किया जाता था अथवा नहीं परंतु बैंक द्वारा ऐसा कोई भी वाउचर न्यायालय के समक्ष प्रस्तुत नहीं किया गया है, ऐसी परिस्थिति में ऐसा मानने का कोई कारण नहीं है कि वास्तव में मजदूरी रोजाना चुकाई जाती थी तथा श्रमिक दूसरे दिन कार्य पर आने के लिए बाध्य था भी अथवा नहीं। अप्रार्थी का एक तर्क यह भी

है कि केन्द्र सरकार द्वारा अंशकालीन कर्मचारियों की भर्ती के संबंध में निर्देश प्राप्त हुआ थे जिसके अनुसार रोस्टर प्रणाली के माध्यम से अंशकालीन कर्मचारी की नियुक्ति की जा सकती थी एवं इसके अलावा भी रोजगार कार्यालय से नाम मंगवाये जाने थे। प्रार्थी को अंशकालीन सफाई कर्मचारी के रूप में नियोजन चूंकि उक्त निर्देशों में अंतर्निहित प्रणाली अपनाकर नहीं किया गया था। अतः उसे मात्र दैनिक ठेके पर काम पर रखे कर्मचारी की श्रेणी का ही माना जा सकता है। माननीय राज. उच्च न्यायालय ने आर एल आर 1989 (1) पृष्ठ 156 यशवंत सिंह यादव/राज. राज्य व अन्य द्वारा यह अभिनर्धारित किया है कि अंशकालीन कर्मचारी भी धारा 25ए औद्योगिक विवाद अधिनियम में परिभाषित कर्मकार की संज्ञा में माना जाता है एवं ऐसे कर्मचारी छंटनी के संबंध में भी धारा 25 एफ की अनुपालना आवश्यक है। जहां तक ठेके पर सफाई का काम कराने एवं प्रतिदिन पारिश्रमिक चुकता करने जैसे तर्कों का प्रश्न है, हमारे समक्ष अप्रार्थी बैंक की ओर से ऐसी कोई साक्ष्य पेश नहीं हुई है कि प्रार्थी दैनिक ठेके पर कार्य पर रखा जाता रहा हो। श्रमिक द्वारा सहायक श्रम आयुक्त केन्द्रीय, अजमेर के समक्ष विवाद प्रदर्श डबल्यू 4 पेश होने के बाद अप्रार्थी ने प्रवर्ष डब. 6 के जरिये सर्वप्रथम ठेके की बात उठायी है तथा उक्त जवाब प्रस्तुत करने के लगभग एक माह पश्चात् प्रदर्श डब. 9 के माध्यम से श्रमिक को पत्र भेजा गया है जिसमें अंकित किया है कि चूंकि प्रार्थी ने स्वतः ही बैंक परिसर की सफाई का कार्य बंद कर दिया है, अतः इस संदर्भ में जो सफाई करने का ठेका दिया गया था उसको समाप्त समझा जावे। प्रार्थी की सेवामुक्ति 26-7-97 को की गयी है जबकि प्रदर्श डब. 9 दि. 8-10-97 का है, अतः स्पष्ट है कि प्रदर्श डबल्यू. 9 बाद में सोच-विचार कर श्रमिक के केस को झुठलाने के आशय से तैयार किया गया है। यदि वास्तव में ठेका दिया गया होता तो 20-3-96 से 26-7-97 के बीच की अवधि में ठेके संबंधी अनेक दस्तावेज बैंक के समक्ष उपलब्ध होते परंतु ऐसा एक भी दस्तावेज पेश नहीं हुआ है। यहां तक कि दैनिक पारिश्रमिक चुकाये जाने की बात भी वाउचर के अभाव में साबित होने में असफल रही है। श्रमिक की छंटनी धारा 2 (00) (बीबी) के एक्सेप्शन के तहत नहीं मानी जा सकती एवं धारा 25एफ की अनुपालना किये बगैर 26-7-97 से की गयी मौखिक सेवामुक्ति वैधानिकता की कसौटी पर सही करार नहीं दी जा सकती।

अतः बिंदु सं. 1 का फैसला प्रार्थी के हक में किया जाता है।

बिंदु संख्या 2 :—प्रार्थी का कहना है कि उसे सेवामुक्ति कर देने के पश्चात् आलम नामक कर्मचारी को नयी नियुक्ति बैंक द्वारा दी गयी है। बैंक ने अपने जवाब व शपथपत्र में ऐसी नियुक्ति करने से इंकार किया है। हमारे समक्ष ऐसी

कोई आलेखीय साक्ष्य नहीं है जिसके आधार पर यह माना जा सके कि तथाकथित आलम नामक व्यक्ति प्रार्थी की सेवा काल के दौरान उससे कनिष्ठ था तथा उसे बैंक ने अंशकालीन कर्मचारी के रूप में जारी रखा हो जबकि प्रार्थी को अवैधानिक तरीके से हटा दिया हो। माननीय राज. उच्च न्यायालय ने 1992(1) आर एल डब्ल्यू पृष्ठ 217 गैरीसन इंजीनियर्स/केन्द्रीय औद्योगिक न्यायाधिकरण व अन्य (2) आर एल डब्ल्यू 1992(1) पेज 221 गैरीसन इंजीनियर्स एम ई एस/केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर व अन्य (3) 1997 डब्ल्यू एल सी पृष्ठ 624 जीवनराम/राज. राज्य व अन्य के मामलों में यह स्पष्ट रूप से निर्धारित किया है कि वैनिक वेतन भोगी कर्मचारी को सेवा में नियमित होने का कोई विशेष अधिकार प्राप्त नहीं है बल्कि उसे भी निर्धारित चयन प्रक्रिया के अनुसार पात्रता होने के बाद किसी रिक्त स्थान के विरुद्ध नियुक्ति दी जा सकती है अन्यथा नहीं। अतः ऐसी साक्ष्य के अभाव में कि तथाकथित आलम नामक व्यक्ति प्रार्थी से कनिष्ठ होते हुए भी उसे बैंक ने सेवा में जारी रखा एवं प्रार्थी की सेवा मुक्ति पश्चात् उसे बगैर अवसर दिये किसी अन्य व्यक्ति को को स्थाई रूप से सेवा में नियोजित कर दिया, यह नहीं माना जा सकता कि अप्रार्थी ने धारा 25एच व जी औद्योगिक विवाद अधिनियम की अवहेलना की हो। अतः बिंदु सं. 2 प्रार्थी के विरुद्ध लय किया जाता है।

आदेश

अनुतोष:—वि. 26-7-97 से ही प्रार्थी की सेवा मुक्ति अवधि एवं कानूनन शून्य करार दी जाती है व उसे अंशकालीन सफाई कर्मचारी के रूप में सेवा में बहाल किया जाता है। प्रार्थी ह. 25/-प्रतिदिन की दर से दि. 26-7-97 से सेवा बहाली की वास्तविक दिनांक तक की अर्ज का बैंक वेजेंज प्राप्त करने का अधिकारी माना जा सकता है। अप्रार्थी अपने कार्यालय में अंशकालीन कर्मचारी की आवश्यकता को धृष्टिगत रखकर प्रार्थी को ऐसी बहाली के पश्चात् नियोजन पर रखने अथवा न रखने के लिए स्वतंत्र होगा परन्तु प्रार्थी की छंटनी से पूर्व धारा 25एफ के आभावक प्रावधानों की पालना अप्रार्थी को आवश्यक रूप से करनी होगी।

अवार्ड आज दि. 10-6-2002 को लिखाया जाकर खुले न्यायालय में सुनाया गया। अवार्ड की प्रति केन्द्र, सरकार को वास्ते प्रकाशनार्थ नियमानुसार प्रेषित की जावे।

राजेंद्र सिंह राठीड़, न्यायाधीश

नई दिल्ली, 3 जुलाई, 2002

का.आ. 2524.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबंध में निम्नलिखित शर्तों के अधीन, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय नं.-2, मुंबई के पंचाटि (संदर्भ संख्या 2/149 ऑफ

1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-2002 को प्राप्त हुआ था।

[सं. एल-12012/44/98-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 3rd July, 2002

S.O. 2524.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/149 of 1998) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 2-7-2002.

[No. L-12012/44/98-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

S. N. Soudankar, Presiding Officer.
Reference CGIT-2/149 of 1998

Employers in relation to the Management of Syndicate Bank.

The Dy. General Manager,
Syndicate Bank, Zonal Office,
Maker Towers, Plot No. 85,
2nd floor, Cuffe Parade, Colaba,
Mumbai-400005.

AND

Their Workmen,
The Secretary,
Syndicate Bank Employees Union,
Khandelwal Bhavan,
1st floor,
166, Dr. D. N. Road,
Fort, Mumbai-400001.

APPEARANCES :

For the Employer : Mr. R. N. Shah, Advocate.

For the Workmen : Mr. Jaiprakash Sawant,
Advocate.

Mumbai, dated 21st March, 2002

AWARD (PART-I)

The Government of India, Ministry of Labour by its Order No. L-12012/44/98-IR(B-II), dated 4th December, 1998, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Syndicate Bank in terminating the services

of Shri Ashok L. Sawant w.e.f. December, 1993 is legal and justified? If not, to what relief the said workman is entitled?"

2. Workman, Ashok L. Sawant was employed in the Syndicate Bank before 24 years as attender. Bank Employees Union vide Claim Statement Ex.-6/6-A averred that the workman who has studied in Marathi Medium upto Standard VII was charge sheeted on 16-12-93 alleging, he removed dishonestly 48 Foreign Inward Remittance Certificates from the Homji Street Branch of the Syndicate Bank for wrongful gain and causing wrongful loss to the Bank. It is contended that in November, 1993, two unsigned FIRC's were presented to Homji Street Branch for putting second signatures on the FIRC's and on verification with their record it was revealed that these certificates were not issued by that branch and the certificates were fake and forged and on that point on checking, it was found that several more FIRC's were missing from various FIRC's pads. On contacting the Homji Street Branch, the Fort Branch informed that FIRC's were obtained from Byculla Branch and on enquiry with Byculla Branch, it was revealed that said FIRC's were lodged by one Abdul Kadar, partner, Pomona Exports, Exporters and Importers, having their office at Mumbai and later on calling said Kadar and asking on obtaining the FIRC's during discussions with Kambli and later on with Kadar, on 3-12-93, Kadar gave in writing that he was in financial difficulties in respect of foreign orders as some of his customers had not made payments, he had to obtain FIRC's from the workman, Sawant. It is the contention of the Union that said Kadar with the help of officers concerned, who has a criminal back ground, obtained blank FIRC's from the Bank, filled them up on his own and resubmitted them to the Bank for processing to enable him to avail of certain export benefits, falsely implicating the workman. It is contended that a false statement was forcibly extracted from the workman dt. 9-12-93 and on that ground, it is alleged that he who removed the FIRC's and given to Kadar of Pomona Exports. It is contended that the Bank for the above allegations charge sheeted workman with gross misconduct of doing an act prejudicial to the interest of Bank vide Clause 19.5(J) of the Bipartite Settlement 1966 and pending enquiry he was suspended with immediate effect vide Clause 19.12(6) BPS 1966. It is contended that workman filed say to the charge sheet on 25-3-94, however, not satisfied with that the Bank held enquiry. It is contended that the enquiry was held during 8-6-94 till 9-8-94. It is contended that fair enquiry was not conducted and that enquiry officer was biased in favour of the Bank. Union contended that enquiry officer did not explain procedure of the enquiry to the workman and his defence representative was not familiar with the enquiry procedure. It is further contended that the defence representative had asked for production of original of the 48 FIRC's in the enquiry as material evidence, however, management refused to produce and that the enquiry officer ignoring that, proceeded further, which caused prejudice to workman. It is contended that the enquiry officer deliberately prevented Dinkar Kambli, Sunil Rane from giving evidence in the enquiry. It is contended that request of the workman of producing the register of FIRC's was not complied with. For all these reasons the enquiry was against the principles of natural justice. It is contended that the enquiry

officer failed to consider material contradictions in the evidence of the witnesses recorded in the enquiry and wrongly relied upon the statement of Kadar. It is contended that findings were recorded against the procedure without reasons and against the record, therefore, findings are perverse. It is therefore, the contention of the union that the enquiry is not fair and findings are perverse.

3. Management-Syndicate Bank resisted the claim of union by Written Statement Ex.-8, contending therein that enquiry was properly held and the findings were recorded by the enquiry officer on the basis of the record available. Management denied that workman was falsely implicated in the episode. It is the contention of the management that workman joined on 7-2-72 as an attender, was confirmed after extending his probation period, as his work was not found satisfactory on 7-11-72. He was warned in the charge sheet dated 4-2-91 and was awarded punishment of stoppage of one increment in charge sheet dated 17-6-93, was reprimanded in the loan matter. It is contended while working as attender in Homji Street Branch between 7-2-92 and 21-8-93, he dishonestly removed 48 FIRC's bearing Nos. 044747 to 044750, 045699-045700, 045806 to 045825, 045904 to 045925 during the period February, 1992 and July, 1993 and he parted the same and handed over to M/s. Pomona Exports through some one known to him, and when some of the certificates were tendered to the said Bank to enable the said party to clear the export bill, the fact of FIRC's came to light. It is contended, on enquiry, said Kadar, partner of the firm, on 3-12-92 stated that the said FIRC's came in his possession from the workman on payment of Rs. 1,000 each and on investigation it is transpired that said firm had already got endorsed about 4 FIRC's during February-March, 1992 and some FIRC's were lying at the Bank Branch at Byculla, Fort. It is contended workman who was transferred to CAO on 9-12-93 by a statement in the presence of clerk Sunil Rane, Manager Ravi Prakash admitted that he who had removed FIRC's totalling 48 on different occasions and out of them some blank forms were given putting Bank's stamp, as he was in financial difficulty and that he had kept some FIRC's in the side track of Day Book Section. For all these reasons, he was charge sheeted dated 16-12-93 for gross misconduct and was suspended during enquiry. It is contended, workman gave reply to charge sheet on 25-3-94 adopting delaying tactics, however, not satisfied with that enquiry was conducted against him. It is contended that Mr. D. B. Shetty was enquiry officer, Mr. U. V. Kukilaya was management representative and workman was represented by Mahale, Secretary of Union. It is contended, enquiry officer had explained the procedure of enquiry and after giving sufficient time, supplying material documents, recorded his findings on 30-11-94, holding the workman guilty, suggesting the major punishment of dismissal from service. It is contended that copy of report was given to the workman and on seeking his explanation and giving him personal hearing the disciplinary authority by order dated 16th June, 1995 dismissed the workman with immediate effect. It is contended workman appealed the said order before the appellate authority and on giving him sufficient opportunity, appeal was dismissed on

31-10-95. It is contended, enquiry was fair and proper and that enquiry officer on the basis of the record available, recorded the findings. Consequently, claim of the union be dismissed being devoid of substance.

4. By way of rejoinder Ex.-10, Union reiterated the recitals in the claim statement denying the averments in written statement. It is contended that he was charge sheeted earlier for petty mistakes and further contended that enquiry was not fair and inquiry officer was biased.

5. On the basis of rival pleadings of the parties my Learned Predecessor framed preliminary issues Ex.-11 and in that context the union filed affidavit of Shri V. S. Mahale, in view of Examination-in-Chief, Ex.-34 and closed evidence vide purshis Ex.-35. Management filed affidavit of inquiry officer Mr. Shetty in lieu of Examination-in-Chief Ex.-39 and passed purshis for closure of evidence Ex.-40.

6. Union filed written submissions alongwith rulings Exs.-45 and 47 and management at Ex.-46. On hearing the counsel for both the parties and the record as a whole and the written submissions, I record my findings on the following issues for the reasons stated below :

ISSUES	FINDINGS
1. Whether the domestic enquiry which was held against the workman was against the Principles of Natural Justice ?	No.
2. Whether the findings of the inquiry officer are perverse ?	No.

REASONS

7. Admittedly, domestic enquiry was held by the Management-Bank against the workman Shri Sawant. According to Union the enquiry was not fair and proper and that findings recorded are perverse. General Secretary of the Union, Mr. Mahale stated that he assisted the workman to defend his case, however he was not fully conversant with the enquiry proceedings which caused prejudice to workman. By way of Statement of Claim, it is pointed out that workman was not explained the procedure of enquiry however, in cross examination para-8, Mr. Mahale who admittedly represented workman clearly admits that inquiry officer had explained procedure of enquiry and that he had pointed out him that he was fully satisfied with the conduct of the enquiry, Mahale is B. Com. At the time of enquiry, he was member of the Union. He was of the choice of the workman. He participated in the enquiry throughout. If really, Mahale and workman would not have understood procedure, and that Mahale would not have been conversant with enquiry procedure, they would have disclosed the same to the inquiry officer or the Management. However, that has not happened. Since he was fully satisfied with the conduct of enquiry, pre supposes that the enquiry was held as per procedure.

8. Another ground put forth by the union to show the enquiry vitiates is that, management representative, Mr. U. V. Kulkilaya did not record the evidence of Dinkar Kambli, Sunil Rane, Ravi Prakash etc. though he had requested the inquiry officer to

summon them. The learned counsel for the Union, Mr. Sawant, submits at this juncture, that Bank deliberately prevented the above officials from giving evidence and had they been examined would have clearly pointed out the real person behind the episode is not the workman but Mr. Kadar and officers of the Bank, who keep the keys of locker wherein FIRC's are kept. On perusal of enquiry proceedings filed with Ex-9 & 6/A, it is seen that the inquiry officer had asked the defence representative Mr. Mahale on examining any witness on his behalf, to which he had declined. In cross examination, Mahale admits he had cross examined the management witnesses but not examined Rane, the then Zonal Secretary. When Rane was material witness as according to the Union statement dated 9-12-93 was forcibly extracted from the workman and that is in the hand writing of Mr. Rane, the clerk, if management not examined them, workman would have very well examined as his witness. From the enquiry proceedings, it appears, enquiry commenced on 8-6-94 and concluded on 9-8-94. It is not that by haste enquiry was conducted. It is well established principle of law that if the delinquent workman does not avail of the opportunity of defending himself by producing documentary and oral evidence in rebuttal, he does so at his own peril and he cannot thereafter be heard of the fairness and propriety of the enquiry. In view of this, I find no substance in the ground taken by the workman as above.

9. Workman was chargesheeted for removing of FIRC's. According to the union defence representative had asked 48 FIRC's be produced in the enquiry, being material evidence. He had also asked to produce the register maintained on FIRC's, however, both these requests were turned down by inquiry officer. According to union serious prejudice caused to the workman for non production of relevant documents. Mr. Sawant, learned Advocate for the Union submits FIRC's give clear picture of movement and dealings in respect of the happening. Had FIRC's produced, clear picture would have come before inquiry officer and that for the first time these are produced with list Ex. 9 at pages 35—41 and 42—83. It is to be noted that workman by Statement dated 9-12-93, confessed on removing the same, therefore, the question what is removed is that way redundant. It is in the evidence of management's witness, Mr. Shetty, according to workman himself FIRC's were misplaced. On perusal the enquiry proceedings, nowhere finds that workman or his representative seriously demanded the FIRC's and that was turned down. In cross, para 9, Mahale deposed that he wanted production of some documents from the management and those were not produced and not that documents which he wanted to produce were not taken on record. It is seen from the enquiry proceedings page 86, Ex-6A, there is reference of register and that according to defence representative it was not checked by the concerned officer and so far FIRC's are concerned, he pointed out that those were not traced that means register was very much produced in the enquiry and the FIRC's were missing, if that is so, hardly lie in the mouth of workman that for want of original FIRC's and register prejudice caused to him. Non production of documents itself does not give rise to say that, that occasion prejudice, what is to be pointed out is that the documents were relevant and in these absence could not be defended properly.

10. On perusal, the enquiry proceeding it is seen it was commenced on 8-6-94. On 5-7-94, Bank examined S. Manjekar and Abdul Kadar and that they were cross examined by defence representative and that 6-7-94 Bank examined Sarangpani and on 9-8-94, he was cross examined and later on Bank examined Mr. D. S. Tiwarkar, who was cross examined by defence representative and that day, defence representative pointed out that he is not interested in producing and witness or documents and that the enquiry be concluded. This shows union did not examine workman Sawant, Sunil Rane who according to workman wrote his statement, but it was false and forcibly extracted. Statement dt 9-12-93 is very much relevant in the matter. No tailor made procedure is in domestic enquiry. In normal course, had workmen not given statement and consequently, had no connection with the alleged incident, he would have boldly stated so before the inquiry officer. However, it seems, he intentionally avoided the same. Their Lordships of the Apex Court in *Sur Enamel and Stamping Works V/s. Their Workmen* 1963 II LLJ SCC pg. 367, ruled that enquiry cannot be said to have been properly held unless :

- (1) the employee proceeded against has been informed clearly of the charges levelled against him.
- (2) the witnesses are examined-ordinarily in the presence of the employee in respect of the charges.
- (3) the employee is given a fair opportunity to cross examine witnesses.
- (4) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and
- (5) the inquiry officer records his findings with reasons for the same in his report.

So far the charges and presence of the workman, opportunity to cross examine the witness of management and to examine the witness on behalf of workman, it is apparent that nothing is made against it, if looked the record as a whole, in the light of the tests laid down in the above said ruling. The learned Counsel Mr. Sawant for union urged with force that rules of natural justice have not been followed, therefore, enquiry vitiated. Rules of Natural Justice are not embodied Rules. The question whether, in a given case where the principles of natural justice have been violated or not is to be found out on consideration as to whether the procedure adopted by the appropriate authority is in accordance with the law or not, and further whether the delinquent knew what charges he was going to make. In short, what is required to be seen whether the workman knew the nature of accusation, whether he has been given an opportunity to state his case, whether the authority has acted in good faith. In the case in hand nothing to show that Principles of Natural Justice are violated.

11. So, far perversity of findings are concerned, the learned counsel for Union, Mr. Sawant urged with force that the inquiry officer did not consider material contradictions in the evidence examined by management and pointing out the enquiry report according to his findings are against the record. Perversity is

that when the findings are such which no reasonable person would have arrived at, on the basis of the material before him. The learned counsel, Mr. Shah, for management submits that statement of workman dt. 9-12-93, in the absence of evidence that it was extracted under force or threat, itself indicate that, he who had removed the FIRC's and had parted to Kambli of Pomona Exports of which Kadar is one of the partners on receiving money as he was in financial difficulties. This material statement coupled with the documents as a whole, it cannot be said that the findings are perverse and that inquiry officer was biased since he was appointed as inquiry officer as well as presenting officer in many Bank cases. Thus the enquiry is fair and proper and as per the Principles of Natural Justice and that findings based on the evidence cannot be said to be perverse. Consequently, preliminary issues are answered accordingly and hence the order:

ORDER

The domestic enquiry conducted against the workman Mr. Sawant was as per the Principles of Natural Justice and the findings of the inquiry officer are not perverse.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 5 जुलाई, 2002

का.आ. 2525.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एवं सिन्ध बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 198/1988) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2002 को प्राप्त हुआ था।

[सं. एल-12012/21/II/87-डी. IV (ए)]

सी. गंगाधरण, अवग सचिव

New Delhi, the 5th July, 2002

S.O. 2525.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 138/1988) of the Central Government Industrial Tribunal-cum-LC, Kolkata as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab and Sind Bank and their workman, which was received by the Central Government on 5-7-2002.

[No. L-12012/21/II/87-D.IV(A)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT KOLKATA

Reference No. 138 of 1988

PARTIES :

Employers in relation to the management of
Punjab and Sind Bank.

AND

Their Workmen.

PRESENT :

Mr. Justice Bharat Prasad Sharma, Presiding Officer.

APPEARANCES :

On behalf of Management : Mr. D. K. Ghosh, Advocate with Mr. R. De, Advocate.

On behalf of Workmen: Mrs. A. Singh, Advocate.

STATE : West Bengal. INDUSTRY : Banking.

Dated : 26th June, 2002.

AWARD

By Order No. L-12012/21/II/87-D.IV(A) dated 16-10-1987 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Punjab and Sind Bank in terminating the services of S/Shri Ram Sevak Sharma, Ranjit Singh, Jagmohan Singh Negi, Shiv Kumar Razak, Kripa Shankar Pandey, Khageshwar Behra and Brijesh Ram, Sub-staff and not considering them for further employment under Section 25H of the ID Act is justified? If not, to what relief are the concerned workmen are entitled?"

2. The present reference has been made on the industrial dispute raised by the Punjab and Sind Bank Employees Congress regarding termination of services of 7 workmen, namely, Ram Sevak Sharma, Ranjit Singh, Jagmohan Singh Negi, Shiv Kumar Razak, Kripa Shankar Pandey, Khageshwar Behra and Brijesh Ram. The written statement was filed on behalf of the union stating the cases of all the 7 effected workmen and the written statement on behalf of the management was also accordingly filed dealing with their individual cases. But, subsequently, it so happened that a petition was filed on behalf of the union on 23-8-2001 stating therein that they do not want to pursue the cases of the three workmen, namely, Jagmohan Singh Negi, Shiv Kumar Razak and Kripa Shankar Pandey and prayed for deleting their names from the list of the concerned workmen. Accordingly, only four persons remain under contest as workmen. They are Ram Sevak Sharma, Ranjit Singh, Khageshwar Behra and Brijesh Ram. In this view of the matter, it will be needless to deal with the cases of other three workmen whose names have been dropped.

3. From the written statement filed on behalf of the union it appears that Ram Sevak Sharma was appointed as sub-staff with Old Court House Street Branch of the Punjab and Sind Bank, Calcutta on 10th August, 1979 and he continued to work upto 13th November, 1981. It is stated that during this period his total working days were 152 days. The management was illegally terminating him and appointing him again and again, but he continued to work for more than 2 years. It is stated that because of the whimsical policies of the Bank management, they did

not allow the workman to continue in regular work for 240 days and, therefore, according to the principles of the Industrial Disputes Act, his work should be deemed to have been more than 240 days. It is also further stated that at the time of the appointment of the said workman the management assured him that he would be enrolled on permanent and regular pay roll when any such vacancy will arise in any of the branches within the Calcutta Region of the Punjab and Sind Bank. It is also stated that the management was not issuing any appointment letter, nor any termination letter thereof and as such the management violated the provisions of the paragraphs 493, 522.5 of the Sastri Award. It is also further stated that the management did not issue any notice to the said workman as required under the Sastri Award and also as required under Section 25F of the Industrial Disputes Act and, therefore, the action of the management in terminating the service of the workman is illegal and improper. It is also stated that the workman was entitled to reinstatement as per Section 25H of the Industrial Disputes Act, but it was not done. Accordingly, the case of the workman was taken-up by the union and when the management did not agree to his reinstatement, the matter was taken-up before the Regional Labour Commissioner and in spite of conciliation proceedings, nothing could emerge and the matter was ultimately reported to the Government of India and the reference followed. It is further stated that the workman was entitled to a total amount of Rs. 94,000 and odd as he is deemed to have worked for the period during which he did not get work. So far as Ranjit Singh is concerned, it is stated that he was also appointed with effect from 1st July, 1980 and he continued to work upto 29-11-1980. His service was also terminated in similar manner without giving any charge sheet or without holding any enquiry and without issuing any notice to him and, accordingly, his case was also taken-up by the union. He is also said to have been entitled to a sum of Rs. 88,000 and odd. So far as Khageshwar Behra is concerned, it is stated that he joined the Bank at Kharagpur Branch on 8th November, 1982 and he was also allowed to work for 47 days only and his service was ultimately terminated without any notice. Accordingly his case was also taken-up by the union. So far as Brijesh Ram is concerned, it appears that he had joined in March, 1983 and he had worked till April, 1984, though he was allowed to work only for 28 days, his total period of work comes to 184 days. He was also terminated without any notice and his case was also taken-up by the union. It is stated that in all these cases nothing happened and no fruitful result emerged from the conciliation efforts made by the Assistant Labour Commissioner and accordingly the failure report was submitted and the reference has been made. In this view of the matter, it has been submitted on behalf of the union that these workmen deserve to be reinstated in service on account of the failure on the part of the management to follow the provisions of the Sastri Award and of the Industrial Disputes Act, 1947.

4. The management also filed a written statement. In Part-I of the written statement the management challenged the maintainability of the present reference on the ground that the Industrial Dispute has not been raised in proper manner and the reference has also been

made without proper application of mind. So far as the individual cases of the workmen are concerned, it has been stated on behalf of the management that they were all employed by the Bank due to exigency from time to time as temporary casual workers. It is stated that Ram Sevak Sharma had worked from 10-8-1979 to 13-11-1981 but his engagement was not continuous and he had worked in total for 152 days only. He was engaged from time to time as per requirement on purely temporary basis and, therefore, there was no requirement of any notice to him for the purpose of his termination. Similarly, regarding the other workmen also it has been stated that they have remained engaged from time to time on exigency and requirement basis and their services were purely temporary and none of them worked continuously for 240 days as required under Section 25B of the Industrial Disputes Act and as such in their case the requirement of notice was not necessary. It is stated that all of these workmen were paid their wages as per the terms and conditions of their appointment and they were terminated whenever their terms of appointment ended and their case is never covered under the provisions of Section 2(oo) of the Act and cannot be termed as 'retrenchment' in legal sense. It is stated that the allegation that they were assured by the management of Bank that they shall be subsequently absorbed permanently is incorrect and false and it is obvious the materials that while Khageswar Behra had worked only for 47 days, the total period of work of Brijesh Ram was 28 days only. All other allegations of the written statement of the union have been specifically denied.

5. Both the parties adduced evidence, oral as well as documentary. So far as oral evidence is concerned, the union examined Brijesh Ram one of the concerned workmen as WW-1. He stated that he was appointed by the Bank as Peon and was posted in the Howrah Branch and he had also worked at Calcutta Main Branch. However, he produced and proved a letter Ext. W-1, which was his letter of appointment. According to him, his payments were being made through vouchers and his service was terminated through a termination letter, Ext. W-2. He has also stated that some persons were also appointed by the Bank after his removal from service and he approached the union in this regard and the union raised the dispute. In his cross-examination, he has stated that he did not possess any other letter than the two letters produced by him regarding his service and he also clearly admitted that he had worked at Howrah Branch from 26th February, 1982 to 8th April, 1982, but in this regard he has no paper. He also stated that on his removal he did not make any representation to the Bank, nor he stated that he was told by the Manager at the time of his termination that he will be taken in when work will be available. However, he also clearly admitted that it is true that in leave vacancy he was appointed in the Bank.

WW-2 is Khageswar Behra, another workman concerned. According to him he joined Bank on 9-11-82 and he remained employed upto 24-12-1983. He has also produced his appointment letter marked Ext. W-3. Further, he stated that he was terminated by letter, Ext. W-4 and he stated that after his termination there was no notification for appointment of sub-staff in the Bank. He admitted in his cross-examination that he

had joined the service of the Bank on the basis of the letter, Ext. W-3, but he said that he did not know that his post was temporary. He also further stated that he did not inform the management in writing that the contents of the letter, Ext. W-3, were wrong and improper, nor he filed any objection to the Bank on his termination through the letter, Ext. W-4. He also stated that he has no other document to show that after his termination anybody else was appointed. He further stated in his cross examination that he had not applied to the Bank for employment, nor he applied to the management after his termination for his re-employment.

WW-3 is Ranjit Singh. According to him he joined the Bank on 8th July, 1980 and continued to work till 29th November, 1980. According to him he was terminated from service without any notice all of a sudden and he was also terminated without any termination letter. He stated that in his case appointment letter was also not issued. However, he states that the Manager of the Bank had informed him about the termination orally. He also stated that the Bank appointed two other Peons after his termination and they are still working in the Bank. In his cross-examination, he has stated that during his service period he had rendered service for more than 120 days, but he has no paper to prove it. He further stated in his cross-examination that he used to get Rs. 10 per day initially and subsequently it was raised to Rs. 12 and then to Rs. 15 per day. He also admitted that he received his remuneration on 'no-work-no-pay' basis. He also stated that he did not make any protest in writing against his termination. He further stated that he has no paper to show that he was appointed against any post and he also could not say whether the two other persons subsequently appointed on his termination were appointed against any vacancy. He further stated that there was no advertisement in the newspaper about any vacancy of Peon before his appointment and his name was also not sponsored by the Employment Exchange. So, he was suggested that he was appointed as a casual worker for a short period only.

WW-4, Ram Sevak Sharma is also one of the concerned workmen. According to him he was employed in the Bank in August, 1979 at a fixed remuneration of Rs. 600 per month and he continued to work for 6 months in the Bank. Thereafter his service was terminated without any notice. He also stated that two persons, namely, Kuldip Singh and Anil Singh were appointed as Peons in the Bank after termination of his service. In his cross-examination, he stated that no advertisement was issued by the Bank before his appointment and his name was not also sponsored by the Employment Exchange. According to him he has no paper to show his appointment, termination or hours of duty as well as nature of work to be performed by him, nor he has any paper to show regarding the remuneration he received. He also stated that he did not send any letter to the Bank against his termination and he has also no paper to show that he was appointed against any permanent or temporary vacancy or post. It has been suggested to him that his appointment was casual on temporary basis and wages were paid on 'no-work-no-pay' basis.

WW-5, Mahendra Prasad is an employee of the Bank and he has stated that he had seen Ranjit Singh working in the N. S. Road Branch of the Bank in 1980 for 120 days. He has also stated that after the termination of his service, two persons were appointed by the Bank. They were Ashok Dhan and Naresh Prosad Singh and that they have become permanent. He has stated in his cross-examination that he has no paper to show that Ranjit Singh had worked for 120 days, though he had seen him working. He has also no paper to show as to what was the basis of paying remuneration to the said workman, Ranjit Singh. He also admitted that he has no paper to show that Ashok Dhan and Naresh Prosad Singh were appointed on the termination of the service of Ranjit Singh. It has been suggested to him that actually Ranjit Singh had worked only for 35 days and not 120 days as stated by him.

6. So far as the management is concerned, MW-1, Jogeswar Mukherjee happened to be an officer posted in the Khatagpur Branch of the Bank in 1982-83. He was posted there as Branch Manager at the relevant time. He stated that Khageswar Behra was working as a temporary Peon on monthly salary basis and his period of engagement was from 19-11-1982 to 24th December, 1982 and he had worked for 45 days in total. He has also denied that he had given any assurance to the workman that he will be absorbed in the Bank. He has also denied that the said workman was required to sign attendance register or that he was paid through his bank account. According to him he was paid through Manager's Cheque. He also denied that any other Peon was appointed after his termination. He also stated that Khageswar Behra did not ever object to the notice, Ext. W-3. In his cross-examination, he has stated that termination of Khageswar Behra was automatically issued in terms of his appointment for a period of 45 days. It was done at the instruction of the Zonal Office.

MW-2 Ajit Singh Makkar show that he was earlier posted at Calcutta from October, 1977 to October, 1985 and at the relevant time he was working as Assistant Manager in the Calcutta Main Branch. He stated that Brijesh Ram was appointed in leave vacancy in place of Jhunu Ram and Badal Chandra Nayak. According to him the workman had worked only for 5 days, i.e., from 23-6-1983 to 27-6-1983 and after the period of his engagement was over, he was released. So, according to this witness the workman was neither discharged, nor dismissed and also not retrenched. He further stated that Ram Sevak Sharma was also engaged in the Calcutta Main Branch in 1979 and his engagement was on purely temporary basis for a specific period as and when required. According to the witness he continued to work with breaks for about 152 days. He further stated that the workman was engaged due to exigency of work whenever occasion arose and he has clearly denied that the workman had worked continuously for six months. He has also denied that Anil Singh and Kuldeep Singh were ever employed in the Bank as claimed by the workman. In his cross examination, he has stated that Brijesh Ram was appointed in place of Jhunu Ram and Badal Chandra Nayak when they proceeded on leave and subsequently his period of engagement had expired and he was released.

MW-3, Mohan Sankar Chugh states that he was posted as Officer in the Naraji Subhas Road Branch of the Bank in 1982-83 and according to him Khageswar Behra was a temporary Peon in the Bank at the relevant time. He has also proved the letter of appointment of this workman, marked Ext. M-6. According to him the appointment of this workman was only for 45 days and he was never appointed against any permanent vacancy, nor he was required to sign attendance register. According to this witness, Khageswar Behra was removed on 24-12-1982 under the orders of the Assistant General Manager in terms of the conditions of his appointment letter, Ext. M-6. There is nothing significant in his cross-examination.

MW-4 is Amarjit Kochar. He stated that he was posted as an Officer in the Naraji Subhas Road Branch of the Bank between 1976 and 1982 and he knew Ranjit Singh and Shub Kumar Razak who were engaged as casual worker. According to him Ranjit Singh was engaged in October and November, 1980 on temporary basis as casual labour for a specific period on 'no-work-no-pay' basis and he had worked for 37 days only. He has further stated that the basis of appointment of sub-staff is the sanction of the post and for filling up such vacancy the names are called far from the local Employment Exchange. According to him interview is held thereafter and suitable candidates are appointed. He stated that Ranjit Singh was not engaged either against any sanctioned post his name was ever sponsored by the Employment Exchange. He has further stated that Ranjit Singh was utilised as Waterman during the period of his engagement and even after his removal, no-one was engaged on permanent basis for this job. He has denied that Ranjit Singh worked for 120 days and he has stated that he was working on 'no-work-no-pay' basis.

7. So far as the documents are concerned, Ext. W-1 is the letter of appointment of Brijesh Ram on 23-6-83. It is clear that his engagement was on temporary basis on account of the absence of Jhunu Ram and Badal Chandra Nayak, Peons on leave. According to the terms of appointment, he was to receive a fixed salary of Rs. 255 per month plus D.A. and his service was purely temporary and he was to be relieved within the said period without assigning any reason. It also appears from the letter that the workman was clearly asked that if he accepted the terms of the letter, he should return two copies of the letter to the Bank and should join accordingly. It is obvious that the letter has been produced by the workman himself and he had also joined the Bank. Therefore, the terms of the letter must apply to the workman concerned and it is clear that the term of his appointment was fixed. Accordingly, his service was terminated vide termination letter dated 27-6-1983, Ext. W-2. It is clearly mentioned in this letter that his engagement was for a fixed period between 23-6-1983 and 27-6-83. Ext. W-3 is the letter of appointment issued in favour of Khageswar Behra on 9-11-1983. The same terms and conditions have been mentioned in this letter also as mentioned in the letter, Ext. W-1. Ext. W-4 is the letter of termination of Khageswar Behra dated 24-12-1982 and at the time of termination he was also given a cheque of his due salary. Several cheque and vouchers regarding payment of salaries to the concerned workmen have been filed and are

In another case, *State of Rajasthan & Ors. v. Rameshwar Lal Gahlot* (1996 I LLJ 888) it has been observed by their Lordships in paragraph 4 like this:

"The controversy now stands concluded by a judgement of this Court reported in *M. Venugopal v. Divisional Manager, LIC* (1994-I-LLJ 597). Therein this Court had held that once an appointment is for a fixed period, Section 25F does not apply as it is covered by clause (bb) of Section 2(oo) of the Act. It is contended for the respondent that since the order of the judge was not challenged, the termination became final. Consequently, the appellant would be liable to pay back wages on reinstatement. In our considered view, the opinion expressed by learned single Judge as well as Division Bench are incorrect in law. When the appointment is for fixed period unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power. Unfortunately, neither the learned single Judge nor the Division Bench recorded any finding in this behalf. Therefore, where the termination is in terms of letter of appointment saved by clause (bb), neither reinstatement nor fresh appointment could be made."

In the case of *Himanshu Kumar Vidyarthi & Ors. v. State of Bihar & Ors.* [(1997) 4 S.C.C. 391] in paragraph 3 as follows :

".....They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be constituted to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment" therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary."

In the case of *State of Himachal Pradesh v. Suresh Kumar Verma & Ors.* [JT(1996) S.C. 455] it has been observed by their Lordships that appointment on daily wage basis is not an appointment to a post according to Rules and in this view of the matter, it has been observed by their Lordships that the Court cannot give any direction to re-engage them in any other work or appoint them against existing vacancies; Otherwise the judicial process would become other mode of recruitment dehors the rules. It has further been observed by their Lordships "The vacancies require to be filled up in accordance with the rules and all the candidates, who would otherwise be eligible, are entitled to apply for when recruitment is made

and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be conduit pipe for regular appointments which would be a backdoor entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class-IV employees recruitment according to rules is a pre-condition. Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee."

In the case of *Madhya Pradesh Haste Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain & Ors.* [JT 1995 (1) S.C. 198] it has been held by their Lordships in paragraph 5 "In the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice."

In the case of *State of Uttar Pradesh & Anr. v. Kaushal Kishore Shukla* [JT 1991(1) S.C. 108] it has been observed by their Lordships in paragraph 6, "Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service."

In the case of *K. Rajan & Anr. v. The Kerala State Electricity Board & Ors.* (1992 Lab. I.C. 1208) it has been observed by their Lordships "In this context, the definition of 'retrenchment' in Section 2(oo) is relevant. Under sub-section (bb) thereof 'retrenchment' does not include termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained there."

11. Considering the principles enunciated by their Lordships in the different cases referred to above, it becomes clear that in the present case the services of all the concerned workmen were on temporary basis for a particular period and termination of their services as such cannot be termed as retrenchment under Section 2(oo) of the Act as it is covered by the exception (bb) of Section 2(oo) of the Act. None of the workmen completed either one year of continuous service or more than 240 days of continuous service within a period of 12 months preceding the date of termination and, therefore, their cases are not covered by either sub-sections (1) or (2) of Section 25B of the Act. In such a case, there is no question of application of Section 25F in their cases. It is also clear that there is no provision shown on behalf of the union in the Sastri Award also to give any protection to such employees who were appointed on purely temporary basis to work as casual workers for a temporary period either fixed or not fixed, but not exceeding three months continuously. Therefore, the question of their termination being termed as illegal or in contravention of the provisions of Section 25F of the Industrial Disputes Act, 1947 does not arise.

The workmen are accordingly not entitled to any relief as claimed on behalf of the union.

The reference is accordingly decided and disposed of.

Dated, Kolkata,

The 26th June, 2002.

B. P. SHARMA, Presiding Officer

नई दिल्ली, 5 जुलाई, 2002

का.आ. 2526: औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, मुम्बई के पंचाट (संदर्भ संख्या 2/63 ऑफ 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-2002 को प्राप्त हुआ था।

[सं.एस-12012/75/2001-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 5th July, 2002

S.O. 2526.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/63 of 2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 5-7-2002.

[No. L-12012/75/2001-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar.—Presiding Officer.

Reference No. CGIT-2/63 of 2001.

Employers in relation to the management of Dena Bank.

The Regional Manager,
Dena Bank,
Head Office, Maker Towers (East),
7th Floor, Colaba, Mumbai-400 005.

AND

Their Workmen.

Sh. Satish Kumar S. Nirankari
C/5, 38, Satsang Bharati Society,
Govind Nagar, Malad (East),
Mumbai-400 097.

APPEARANCES :

For the Employer : Ms. Nandini G. Menon,
Advocate.

For the Workmen : Ms. K. N. Samant, Advocate.

Mumbai, dated, 9th May, 2002.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/75/2001-IR(B-II), dated 2/8-5-2001, in exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, have referred the following Dispute to this Tribunal for adjudication.

“Whether the action of the management of Dena Bank, Mumbai in terminating the services of Sh. Satish Kumar S. Nirankari, sub-staff, w.e.f. 31-5-1999 and non-regulation in Bank's service in sub-staff cadre is legal and justified? If not, what relief the workman, Sh. Satish Kumar S. Nirankari, is entitled to?”

2. Satish Kumar S. Nirankari was engaged in Dena Bank as peon, sub-staff, at Orlem Branch, Malad (W), Mumbai on 15-5-89. Nirankari vide Statement of Claim (Exhibit-6) contended that he was paid Rs. 50 per diam for six days in a week. His duty hours were more than the regular sub-staff commenced from 8.30 a.m. to 6.00 p.m. He was doing regular work of sub-staff as cleaning including sweeping and swalling, despatch, deliver, to give water to the staff whenever demanded, to attend cash, cheque and receipts, to file record and vouchers etc. He averred that he worked 46 days in Orlem Branch, from 15-5-89 to 26-6-89; 9 days in the said Branch from 10-7-89 to 18-7-89; 32 days in Borivli (E) Branch from 7-8-1989 to 7-9-1989; 26 days in Orlem Branch from 8-9-1989 to 3-10-1989. 7 days in Kandivli (E) Branch from 26-2-1990 to 3-3-1990; 92 days in Orlem Branch from 9-4-1990 to 9-7-1990; 31 days in Kandivli Branch from 16-8-1990 to 15-9-1990; 54 days in Jogeshwari (W) Branch from 2-3-1991 to 24-4-1991; 63 days in Orlem Branch from 26-4-1991 to 27-6-1991 and in Jogeshwari (W) Branch for 227 days from 31-6-1991 to 15-1-1992; 256 days from 22-1-1992 to 3-10-1992; 365 days from 1-1-1993 to 31-12-1993; 365 days from 1-1-1994 to 31-12-1994; 365 days from 1-1-1995 to 31-12-1995; 365 days from 1-1-1996 to 31-12-1996; 365 days from 1-1-1997 to 31-12-1997; 365 days from 1-1-1998 to 31-12-1998; 150 days from 1-1-1999 to 30-5-1999. According to him he worked in all 3137 days in the bank i.e. about 10 years completing 240 days in each year i.e. from 15-5-89 till 30-5-99. He worked there continuously out of sheer helplessness and lack of bargaining power with the hope that he would be made regular employee in the bank. It is the contention of Nirankari that as per the circular of Head Office (Recruitment Department) dated 18-12-77 the temporary employees engaged on or after 1-1-82 and worked for 240 days or more are required to be regularised. He had applied for the post of Sepoy on 30-8-1991 however his claim was ignored. It is

his contention that while working in Jogeshwari Branch, Branch Manager had strongly recommended him on 22-11-1993 to regularise his services as there were vacant posts of M. B. Kadam due to his death in 1991 and on retirement of Shri V. B. Rathedkar (Cash-Peon) in 1994 and retirement of Mr. Jayanarayan Singh in 1996. However, he was ignored. It is his contention that with courage he had requested the Manager, Mr. Mishra of Jogeshwari (W) Branch to enhance his wages from Rs. 50 per diam and also for permanency but that hurt him and he told him not to report for work from 1-6-99 and that his services were abruptly discontinued. It is contended after discontinuing him the Branch Manager engaged one Dilip in November, 1999 who is continued till today. It is contended as Nirankari's services were terminated illegally he had preferred writ petition No. 1035/2000 before the Hon'ble High Court and that Hon'ble High Court pay the order dated 28-3-2001 directed the Central Government to refer the demands for regularisation, reinstatement and back wages by way of reference to this Tribunal. It is contended by Nirankari that since he has been illegally terminated after putting in service about 10 years, bank be directed to reinstate him with full back wages or regularise him.

3. Management, Dena Bank, resisted the claim of Nirankari by filing Written Statement (Exhibit-12) contending that the reference is not maintainable as not espoused by the union and further that in case of Nirankari there was no discharge, dismissal, retrenchment or otherwise from the bank. It is contended no master and servant relationship exists between the bank and Mr. Nirankari. He was never permanent employee of the bank. No appointment letter was ever issued to him by the bank. It is contended Nirankari was engaged by Jogeshwari Branch intermittently for doing odd jobs and he was paid lumpsum amount proportionate to the work done by him. His services were purely on temporary basis and of casual nature. It is contended in the Bi-partite Settlement dated 19-10-1966 as modified from time to time bank is entitled to engage services of such persons for a limited period of work of essential temporary nature, and that it was neither obligatory on Nirankari to make him available daily to do the odd jobs nor the bank was required to engage his services daily for doing odd jobs. It is contended that recruitment of subordinate staff against permanent vacancy, the bank is required to strongly follow the recruitment procedure as outlined in the Government guidelines and the Bi-partite Settlement, bank is required to call for the list of candidates fulfilling the norms of age and qualifications etc. from employment exchange, panel of eligible candidates is prepared in the order of merits after interview, and as and when a regular employee goes on leave these persons posted in such vacancy and their services automatically ceases since the regular employee reports for duty after availing leave. It is contended so far permanent full time vacancies in sub-staff cadre are concerned, the same are filled up by giving preference to the existing part timers. It is contended Nirankari was not sponsored by Employment Exchange and does not fulfil the recruitment norms in respect of age and educational qualifications entitling him for employment; therefore question of absorbing him in the service of the bank does not arise. Bank

denied that Nirankari worked from 15-5-89 till 30-5-99 in the branches and even he worked nearly for about 10 years and completed more than 240 days in each year inspite of artificial breaks. It is contended that Nirankari had not satisfied requirement for appointment as a sub-staff as per bank's circular from time to time. It is contended Nirankari is seeking employment in the bank through a back door entry which is not permissible under the law. For all these reasons, bank contended to dismiss the claim of Nirankari in limine.

4. By way of Rejoinder (Exhibit-13) Nirankari reiterated the recitals in the Statement of Claim denying the averments in the Written Statement, further contending that since the bank which was party to the writ referred to above, consented to refer the dispute, now cannot probate and reprobate. It is contended that only because Nirankari was not in permanent vacancy, relationship of employer and employee does not end. It is contended as per the settlement, bank is required to give preference to those employees who have worked for three months. It is contended since Nirankari worked for about 10 years bank is required to regularise him in the light of the Government Circular and Bi-partite Settlement applicable to him.

5. On the rival pleadings of the parties issues were framed at Exhibit-14, and in that context Nirankari filed affidavit in lieu of Examination-in-Chief (Exhibit-24) and closed evidence vide purshis (Exhibit-26). Manager (P) Mr. Suresh Pai filed affidavit in lieu of Examination-in-Chief (Exhibit-25) and management closed evidence vide purshis (Exhibit-27).

6. Nirankari filed written submissions (Exhibits 28, 29 and 31) with copies of rulings and the management as (Exhibits 30/32). On perusing the record as a whole and hearing the Learned Counsel for both sides, I record my findings on the issues for the reasons mentioned below :

Issues	Findings
1. Whether the reference is maintainable as averred in Written Statement, para 2(a) ?	Yes.
2. Whether Nirankari proves that he worked continuously more than 240 days ?	Yes.
3. Whether the bank complied with the provisions of Section 25F of the Industrial Disputes Act ?	Does not survive.
4. Whether the action of the management of Dena Bank, Mumbai, in terminating the services of Shri Satish Kumar S. Nirankari, sub-staff w.e.f. 31-5-1999 is legal and justified ?	Does not survive.
5. Whether the action of the management in not regularising Nirankari in the Bank's service in sub-staff cadre is legal and justified ?	Not legal and not justified.
6. What relief Nirankari is entitled to ?	As per order below.

REASONS

7. At the threshold the Learned Counsel for the bank inviting attention of this Tribunal to the record and Written Statement para 2(a) submits that the cause was not espoused by any of the union and that the reference does not relate to the dismissal/discharge or retrenchment or otherwise of Shri Nirankari from the bank and therefore it is also not maintainable under the Provisions of the Industrial Disputes Act. The Learned Counsel Ms. Kunda Samant urged with force that the terms of reference speaks of termination of employment and that bank which was party to the Writ Petition had consented to refer demand of reinstatement/regularisation and retrenchment compensation, therefore, now cannot probate or reprobate and further submits that discontinuance/striking off name from the muster roll amounts to termination of employment, therefore squarely maintainable. It is well settled legal position that a dismissed/discharged or retrenched workman can espouse his cause independently under section 2A of the Industrial Disputes Act, and that discontinuance, striking off name is as good as termination of service, consequently falls under the provisions of the Industrial Disputes Act, entitling the workman to prosecute the cause, without that being espoused by the union. In this view of the matter the reference is maintainable. Consequently issue No. 1 is answered accordingly.

8. According to Shri Nirankari he worked in the bank in various branches as sub-staff/peon/Daftary cash-peon from 15-5-89 to 30-5-99. He worked more than 3133 days till 31-5-99 and that day abruptly his services were terminated. Bank's Manager, Mr. Pai denied the same contending that he was casual labour, he was never engaged as the employee of the bank. It was neither obligatory on Nirankari to make himself available daily for doing odd jobs nor was it obligatory on the part of the bank to engage his services daily for doing the odd jobs, he being purely a casual labour, does not get status in permanency. Though Mr. Pai denied on the working days of Nirankari admits the letters of the bank filed on record (Exhibit-16). Letter of the bank (Exhibit-16/17) shows in the year 1992 he worked for 274 days; (Exhibit-16/07) indicates from 1993-98 he worked as a badli-sepoy for 273 days; 261, 288, 288, 259; 261 days. According to Nirankari on 30-5-99 he was told not to come on work. This shows Nirankari worked continuously with the bank for more than 240 days for 12 months preceding the date of removal. Therefore hardly can be said that Nirankari did not work continuously for 240 days. Consequently Issue No. 2 is answered in the affirmative.

9. So far the nature of work is concerned, letters referred to above show that he was Badli-Sepoy in the sub-staff cadre. According to Mr. Pai work of Nirankari was of casual nature. He was receiving Rs. 50 for the work done. Nirankari admits in his cross-examination, para 13 that he was not given appointment letter by the bank nor he signed on the register of daily sub-staff, he was also not given identity card so also the benefits of LTC, medical leave etc. He was Badli worker. The Learned Counsel for the bank at this juncture submits that

Nirankari being a Badli-worker whose services were engaged on the basis of need of work, termination of such employees cannot be construed to be retrenchment relying on Himanshu Kumar Vidyarthi Vs. State of Bihar AIR 1997 SC pg. 3657. Their Lordships ruled "Daily wage employees whose services were employed on the basis of need of work termination of such employee cannot be construed to be retrenchment." Therefore question of complying the provisions under Section 25F of the Industrial Disputes Act in case of Nirankari does not arise.

10. According to the management Nirankari was a casual labour. He was not a regular employee of the bank. He was paid for the work done by him. When work was not available he was told not to come therefore question of his termination does not arise. On perusal the letters filed with list (Exhibit-16) which was admittedly the bank especially (Exhibit-16/17 & 6) show post in place of Kadam Rathodkar were not filled and therefore Nirankari was asked to work clearly show that work was available but the vacancies were not filled.

11. Admittedly Nirankari was not sponsored by the Employment Exchange. According to management recruitment procedure is laid down and that Nirankari seeks back door entry which is not permissible in law. Nirankari worked in the bank since 1989 till 1999 i.e. about 10 years for the wages of Rs. 50 per diem. Mr. Pai is not aware on the wages of the newly appointed sub-staff. Nirankari was 19 years old and had passed 8th standard at the time of the entry in the bank. Under the Bipartite Settlement and as per the directions of the RBI the sub-staff worked in the bank as part time/casual labourer are to be absorbed on calling applications by publishing advertisement or empannement. Mr. Pai admits, Nirankari was not taken in the panel in accordance with the terms of agreements of the year 1977/93. On perusal of the list (Exhibit-15) furnished by Nirankari shows from the year 1982-85 and 1986 some candidates were recruited though not sponsored by the employment exchange. Mr. Pai is unable to tell on the candidates mentioned in the list (Exhibit-15), though admits that permanent vacancy accrued in the bank due to death/resignation/promotion etc. From the letters of the Branch Manager (Exhibit-16/17 & 6) it is clear the posts were vacant since long. When Nirankari worked as a casual labour and that work was available and when Bipartite Settlement speak on the absorption of sub-staff who worked in the bank, but neglected, is clearly an example of exploitation of labour whose bargaining capacity is weak. The Learned Counsel for the management bank submits that Badli workers have no right to claim employment in the place of any compassionate employee. They are casual employees without any right to be employed relying on Prakash Cotton Mills Vs. Ashtriya Mills Mazdoor Sangh 1987 1 LLJ pg. 97. In the case in hand, Nirankari worked in the bank as stated above for about 10 years. It is seen from the evidence of Mr. Pai that he was not taken in the panel in accordance with the terms of agreement of the years 1977-1993, whereas in the case referred to above, workers were casual employees for doing partly work in a particular period, therefore the said ruling is of no avail to the management.

12. In view of the observation in case of Himanshu Kumar Vidyarthi, Nirankari being a badli-sepoy engaged on the basis of need of work, his discontinuance cannot be construed to be retrenchment. The concept of retrenchment therefore cannot be stretched to such an extent as to cover this employee. Consequently question of issuance of notice and payment of retrenchment compensation does not arise.

13. The Learned Counsel for the management, Bank submits that only because Nirankari worked in the bank as Badli Sepoy he does not get right to regularisation. He was so engaged for casual work. Procedure of recruitment is laid down. Employing casual workers without sponsoring by the employment exchange would be encouraging back door entry which is not contemplated under law. She submits Their Lordships of Supreme Court in State of Haryana & Ors. Vs. Piara Singh & Ors. 1992 II CLR 890 strongly condemned the practice of giving back door entry. She submits Their Lordships of Madras High Court in Rajapalayam Municipality, Rajapalayam represented by its Commissioner Vs. Presiding Officer, Additional Labour Court, Madurai & Ors. 2001 II CLR 477 observed that "Daily rated workers have no right to claim regular employment". She submits where the appointment is purely on casual basis ends after completion of work. Consequently persons holding such post can have no right to continue in the post, therefore question of their regularisation does not arise. At this juncture the Learned Counsel Ms. Samant for Nirankari inviting attention of this court to the rulings filed by her submits, bank paid only Rs. 50 to Nirankari and on that amount he worked in the bank for a decade, who was admittedly ignored though considered the persons mentioned in (Ex-15) is a clear cut case of unfair labour practice, by raising technical and hyper-technical pleas. She has quoted para. 12 in the decision of the Hon'ble Supreme Court in case of H. D. Singh Vs. Reserve Bank of India & Ors. 1985 FLR pg. 494, wherein Their Lordships of the Apex Court observed :—

"We thought it necessary to refer to the factual details in the case only to show our concern at the manner in which the employer in this case, the Reserve Bank of India, who should set a model for other employers being a prestigious institution, behaved towards its employees. It must have been his helpless condition and abject poverty that forced the appellant to accept a job on Rs. 3 per day. Still see how he has been treated. We will not be far from truth if we say that the bank has deliberately indulged in unhealthy labour practice by rotating employees like the appellant to deny them benefits under the Industrial law. It has disturbed us to find that the appellant was denied job because he had become better qualified. Perhaps the Reserve Bank of India and its officers are not aware of the grave unemployment problem facing the youth of this country and also not aware of the fact that graduates, both boys and girls, sweep our roads and post-graduates in hundreds, if not in thousands, apply for the post of peons.

It has been our sad experience to find employers trying to stifle the efforts of employees in their legitimate claims seeking benefits under the Industrial Law by tiring them out in adjudication proceedings raising technical and hyper technical pleas. Industrial adjudication in bona fide claims have been dragged on by employers for years together in such pleas. It would always be desirable for employers to meet the case of the employees squarely on merits and get them adjudicated quickly. This would help industrial peace. It is too late in the day for this court to alert the employers that their attempt should be to evolve a contended labour. We do not forget at the same time the fact that it is necessary for the labour also to reciprocate to prevent industrial unrest. In this case, for example, the Bank should have treated the appellant as a regular hand in List II. Instead the Bank has, by adopting dubious, methods invited from us, remarks which we would have normally avoided."

14. On perusal of the record it is seen Nirankari was Badli sepoy worked in many branches. Persons subsequently taken were regularised as the list (Exhibit-15) has not been challenged by Mr. Pai and that admittedly he was not considered for regularisation. Considering the observation of Their Lordships of the Apex Court referred to above, and that Nirankari worked about 10 years, the action of the management in not regularising Nirankari in the banks service, is not legal and justified. The Bank will have therefore be directed to regularise Nirankari in sub-staff cadre as per rules, as and when vacancy arises. Issues are therefore answered accordingly and hence the order :—

ORDER

The action of the management of Dena Bank, Mumbai, in not regularising Nirankari in the Bank's service is not legal and justified.

Management, Dena Bank is directed to regularise Nirankari in sub-staff cadre as per rules, as and when permanent vacancy arises.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 9 जुलाई, 2002

का.आ.2527:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 679/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-7-2001 को प्राप्त हुआ था।

[सं.एल-12013/121/98-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 9th July, 2002

S.O. 2527.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 679/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and their workman, which was received by the Central Government on 8-7-2002

[No. L-12013/121/98-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 24th June, 2002

PRESENT :

K. Karthikeyan, Presiding Officer.

INDUSTRIAL DISPUTE NO. 679/2001

(Tamil Nadu Principal Labour Court CGID, No. 317/99)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between Sri A.K. Akbar Basha and the Management of Vijaya Bank Chennai.)

BETWEEN

The Joint Secretary, : I Party/Claimant,
Vijaya Bank Workers Organisation

AND

The Deputy General Manager : II Party/Management,
Vijaya Bank, Chennai.

APPEARANCE :

For the Claimant : Sri S.D. Srinivasan, Authorised Representative.

For the Management : M/s. P.S. Raman, P.R. Raman & S. Aravamuthan, Advocates.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-12013/121/98/IR(B-II) dated 17-5-1999/25-5-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, where it was taken on file as C.G.I.D. No. 317/99. When the matter was pending enquiry in that Principal Labour Court, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, the case has been taken on file as I.D. No. 679/2001 and notices were sent to the authorised representative for the I Party/Union and the counsel on record for the II Party/Management, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 24-10-2001 to prosecute this case further. On receipt of notice from this Tribunal, the authorised representative for the I Party/Union and the counsel for the II Party/Management present along with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 10-5-2002, upon perusing the Claim Statement, Counter Statement, rejoinder filed by the I Party/Union, other material papers on record, documentary evidence let in on the side of the I Party/Workman, the written arguments filed by the authorised representative for the I Party/Union, after hearing the arguments advanced by the learned counsel for the

II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the management of Vijaya Bank is justified in imposing the punishment of stoppage of two increments on Shri A.K. Akbar Basha, Armed Guard? If not, what relief is the workman entitled to?”

2. The averments in the Claim Statement filed by the I Party/Claimant Union (hereinafter refers to as Petitioner) are briefly as follows :—

The Assistant Regional Secretary of Vijaya Bank Workers Organisation, Chennai has raised this industrial dispute espousing the cause of the workman Sri A.K. Akbar Basha. The concerned workman Sri A.K. Akbar Basha was working as armed guard at Currency Chest Branch, Coimbatore of the Respondent/Vijaya Bank. The concerned workman was given a charge sheet dated 11-11-1996 alleging of disorderly and unruly behaviour, doing acts subversive of discipline on 25-5-1996. The concerned workman gave his reply dated 5-12-1996 denying the charges alleged against him. Pursuant to the same, the Respondent/Bank management instituted an enquiry against the concerned workman. The industrial relations atmosphere in Coimbatore branch of the Respondent/Bank during the relevant point of time was in total chaos arising out of abuse of authority and wrongful exaction on the part of the official-in-charge of the Currency Chest Branch. The employees working in the Currency Chest Branch including the concerned workman covered in the present dispute have submitted several representations seeking redressal of grievances as per para 517 of Sastry Award. The Petitioner Union also took up the issue for an early redressal of grievances. The Zonal/Head Office of the Respondent/Bank conducted at least 5 to 6 investigations but no appropriate remedial steps were taken to defuse the situation. Thereafter an elaborate discussion took place between the local management of the Respondent/Bank and the Petitioner Union, wherein it was suggested that both parties shall avoid the enquiry and the Petitioner Union demanded that the quantum of punishment, if any, to be imposed on the charge sheeted workman should be kept to the barest minimum keeping in view the over all industrial relations in the zone. Accordingly, Sri A.K. Akbar Basha submitted a representation dated 27-3-97 admitting the charges relating to the facts of the case only under para 19.12(e) of the Bipartite Settlement dated 19-10-1966. Even though the Respondent/Bank originally ordered a domestic enquiry to be held on 26-4-1997, the Disciplinary Authority accepted the second representation of the concerned workman and dispensed with the enquiry proceedings. The same is as a sequel to the mutual understanding arrived at between the Respondent/Bank and the Petitioner Union. On 11-6-1997, the Disciplinary Authority communicated to Sri A.K. Akbar Basha his proposal to impose the punishment of stoppage of two increments permanently which will have the effect of postponing his future increments. Aggrieved over the punishment Sri A.K. Akbar Basha submitted his averments by way of his representation dated 18-6-1997, contending among other things that the proposed punishment, if imposed would result in grave miscarriage of justice and also highlighting the fact that the proposed punishment was severely harsh, excessive, disproportionate to the gravity of misconduct and smacks of victimisation. The charge sheeted employee has also requested for a personal hearing to represent his case as regards the nature of proposed punishment. On 16-7-1997, the Disciplinary Authority who imposed the punishment on 11-6-1997 had granted a personal hearing. The concerned workman and his defence representative had brought out several extenuating circumstances and also other pleadings with regard to the quantum of the proposed punishment with the request to reduce the same. At this juncture, no order was passed. On 1-9-1997 a newly appointed Disciplinary Authority confirmed the punishment proposed by his predecessor and imposed the punishment of stoppage of two increments permanently. The said order was passed as contained in the memo bearing No. MDZ : IRS : 622 : 97 dated 1-9-1997 and without according any personal hearing afresh. This order is, therefore, illegal, unlawful and neither sustainable nor maintainable.

Against this order of penalty involving two Disciplinary Authorities i.e. one proposing the punishment on 11-6-1997 and according to a personal hearing on 16-7-1997 while, the other imposing the final punishment on 1-9-1997, the employee concerned filed an appeal dated 13-10-1997 to the General Manager, Personnel Department, Vijaya Bank Head Office, Bangalore, who is the Appellate Authority for the Award Staff in the Respondent Bank. The Appellate Authority without proper application of mind to the facts and circumstances of the case acted mechanically and in verbatim accepted the versions of the two Disciplinary Authorities and thus chose to dismiss the appeal in his order dated 18-11-97. This order of the Appellate Authority is equally void, being contrary to the principles of natural justice and the relevant provisions of law in force. The Petitioner Union raised an industrial dispute before the Regional Labour Commissioner (Central) Chennai, by letter dated 27-12-1997. The conciliation officer took up the dispute for conciliation and held conciliation proceedings, in which the representative of the Petitioner Union the Respondent Bank participated. As the attempt made by the conciliation officer ended in failure, he submitted the failure of conciliation report to the Govt and the Govt. was pleased to refer this dispute for adjudication by this Tribunal. The action of the Respondent Bank in imposing the punishment of stoppage of two increments permanently on Sri A.K. Akbar Basha, Armed Guard, Currency Chest Branch of the Respondent Bank, Coimbatore is illegal, unlawful and unjustified. The charges alleged against the workman other than the facts of the case are not true but false and fabricated besides being trivial, flimsy, vague and indefinite. The punishment imposed on Sri A.K. Akbar Basha is null and void for the simple reason of the fact that one Disciplinary Authority gave a personal hearing, while the another authority imposed the punishment. A gross injustice had been done to the concerned workman due to a serious violation of basic rules of natural justice involving a procedure adopted by the Respondent Bank in which the hearing of the matter is done by one authority while the punishment was imposed by another. The personal hearing has become an empty formality in the instant case, whereas the Respondent Bank had already made up its mind to punish the employee, thus, it is a clear case of victimisation and unfair labour practice. The punishment is grossly disproportionate, excessive, severe and does not commensurate with the gravity of the allegation. The second Disciplinary Authority while imposing the punishment has failed to give a personal hearing to the employee concerned. Thus, the Respondent Bank violated the principles of natural justice and the terms and provisions of the Awards and Bipartite Settlements. The reference to past records is vague and unspecific and lacking in material particulars. Thus, there has been a deliberate denial of opportunity resulting in violation of para 19.12 of Bipartite Settlement. There has been no fair and honest application of mind. There has been no fair and honest disposing of the appeal. Even though, the workman concerned has made a voluntary admission of the charges relating to the facts of the case only, neither the Disciplinary Authority nor the Appellate Authority have made any fair attempt to evaluate the facts and other circumstances leading to the framing of the charges. An admission of facts cannot amount to an admission of guilt. The punishment imposed on the concerned workman is, therefore, motivated and lacking in good health. The allegations set out in the charge sheet even if they are assumed to be true does not warrant a severe punishment as the one already imposed on Sri A.K. Akbar Basha. The procedure in which the hearing of a matter is delegated to one authority, while the power of final disposal is vested in another cannot be countenanced as a correct procedure and must be struck down as violative of principles of natural justice. Hence it is prayed that this Hon'ble Tribunal may be pleased to hold that the Respondent Bank was not justified in imposing the punishment of stoppage of two increments permanently on Sri A.K. Akbar Basha from September, 1997 and to direct the Respondent Bank to restore the increments and to reimburse all the losses suffered by the workman together with all the consequential benefits and to pass an award accordingly with costs.

3. The averments in the Counter Statement filed by the II Party/Management, Vijaya Bank, Chennai, (hereinafter refers to as Respondent) are briefly as follows :—

The concerned workman Sri A.K. Akbar Basha is working as armed guard at the Respondent Bank Currency Chest

Branch, Coimbatore. His duty is to guard the currency chest at the entrance and should not desert his post for any reason unless his superiors call/permit him to go out during duty hours. The workman concerned during duty hours on 25-5-1996 at about 11:30 A.M. abandoned his post of duty at the entrance of the currency chest and rushed inside the currency chest wherein Sri B. Gopalakrishnan, Senior Manager, was seated. He misbehaved with the said official regarding switching on the generator of the Currency Chest. He also shouted at him in foul language and threatened the Senior Manager with the gun provided to him. The exact words used by the concerned workman to abuse the Senior Manager are given in the charge sheet which may be treated as part of this statement. Any civilized, culture and average man who reads the foul language used by the workman that too in the office before a Senior Manager during duty hours would judge/assess the armed guard's conduct as misbehaviour especially the workman being an armed guard that too an ex-serviceman who is expected to behave in a disciplined and orderly manner. The workman acted in a riotous disorderly and unruly manner within the premises of currency chest, Coimbatore leading to wilful insubordination towards official superior. The above matter was brought to the notice of the management. Consequently, Disciplinary proceedings against Sri A.K. Akbar Basha, the concerned workman and he was issued with charge sheet dated 11-11-96. In the said charge sheet, the misconduct committed by the concerned workman has been clearly stated. On receipt of the charge sheet, the concerned workman submitted his statement of defence dated 5-12-96 by way of reply to the charge sheet, wherein he denied the charges levelled against him. Then an enquiry was conducted. The concerned workman submitted a written representation dated 27-3-97 wherein, he voluntarily admitted the charged levelled against him under clause 19.12(e) of the Bipartite Settlement, 1966 and expressed regret for his actions. In his representation dated 27-3-97, the workman expressed as under :

"In this connection, I wish to make voluntary admission of the charges in terms of Clause 19.12(e) of the Bipartite Settlement, 1966, so far as the facts of the case is concerned."

The said representation to the Respondent was voluntary. The representation of the workman was absolutely free from any condition and thus, the Respondent has every right in dispensing with the enquiry fixed for 26-4-97. It would be redundant to conduct an enquiry into the charges, once the workman voluntarily admits the charges under clause 19.12(e) of the Bipartite Settlement. Consequently, the Disciplinary Authority sent a second show cause memo dated 11-6-87, wherein it was proposed to impose the punishments in respect of the charges levelled against the workman in charge sheet dated 11-11-96. The proposed punishment of stoppage of two increments permanently on each one of the three charges to run concurrently will have the effect of postponing his future increments. The workman was called upon to explain why the above punishment should not be imposed upon him for the charges contained in the charge sheet dated 11-11-96. While proposing the punishment, the management had gone through his past service records. As an armed guard whose duty would be to safeguard the currency chest and to protect the interest of the bank, deserted his place of duty, misbehaved and abused the Senior Manager in foul language committed wilful insubordination, which constitute gross misconduct that would attract extreme punishment. But the Disciplinary Authority having considered all aspects of the case had arrived at the conclusion that

stoppage of two increments permanently would meet the ends of justice and would not be disproportionate to the gravity of the acts of misconduct committed by the workman. The second show cause notice was received by the workman and he submitted his representation dated 18-6-97, wherein he requested for consideration of the proposed punishment and also for a personal hearing. The Disciplinary Authority fixed the date of personal hearing on 16-7-97 at 3.30 pm and the workman was permitted to appear before the Disciplinary Authority along with his defence representative vide letter dt. 2-7-97. The workman along with Sri S. D. Srinivasan, his defence representative appeared before Sri K. Radhakrishnan, Deputy General Manager the then Disciplinary Authority on 16-7-97. The oral submission put forth by the workman and the defence representative were recorded by way of proceedings by the Disciplinary Authority and the proceedings were signed by the workman and his defence representative. The Disciplinary Authority after careful consideration of the relevant records, the representation dated 18-6-97 of the workman and the oral submissions made before the Disciplinary Authority during the personal hearing which was reduced to writing, came to the conclusion that there was no need to modify the punishment already proposed and accordingly passed a speaking order dated 1-9-97 imposing the punishment of stoppage of two increments permanently on the workman which will have the effect of postponing his future increments. The above order was passed after application of mind and through perusal of the connected records. Sri Kiran Kumar, Deputy General Manager, Disciplinary Authority had gone through all materials on record and came to the conclusion that no modification of the punishment was warranted in this case and imposed the punishment of stoppage of two increments permanently. The Disciplinary Authority passed a speaking order giving reasons for arriving at the conclusion and for imposing the said punishment. Aggrieved by the final order dated 1-9-97 of the Disciplinary Authority, the workman preferred an appeal dated 13-10-97 requesting the Appellate Authority to set aside the punishment imposed on him. The Appellate Authority had found no reason for interfering with the punishment imposed by the Disciplinary Authority and passed speaking order dated 18-11-97 upholding the punishment imposed by the Disciplinary Authority. The concerned workman of his own acts of breach of discipline and other actions on his part constituting misconduct leading to punishment had invited the action from the Respondent. No responsible management in general and banks in particular, which deals with public money would tolerate indiscipline by the staff members. As such, the question of arriving at compromise in the matter of discipline of staff with the union does not arise at all. The workman submitted the representation dated 27-3-97 admitting the charges unequivocally and categorically in his own accord under clause 19.12(e) of the Bipartite Settlement, 1966. Under such circumstances, the Disciplinary Authority took a lenient view in the matter and therefore, dispensed with the conduct of departmental enquiry. This is not sequel to any mutual understanding. The Respondent had given all opportunities to the workman to defend his cause. Principles of natural justice were meticulously ad-

hered to and his demand such as personal hearing were met. Nowhere the Petitioner was deprived of any facility while defending his case. Due to the transfer of Sri K. Radhakrishnan, the then Deputy General Manager, Disciplinary Authority Zonal Office, Chennai, the successor as Disciplinary Authority based on the proceedings recorded by his predecessor imposed the proposed punishment. Hence, it does not suffer any illegality. The Appellate Authority had applied his mind and considered the appeal in all aspects. As the misconduct committed by the Petitioner is so grave in nature, and there was no extenuating circumstances warranting lesser punishment other than the punishment of stoppage of two increments permanently, the Appellate Authority passed order dated 18-11-97 confirming the punishment imposed by the Disciplinary Authority. The acts of misconduct are grave in nature and as such the punishment of stoppage of two increments imposed on the workman is in no way excessive/severe as averred. Further, the action of the Disciplinary Authority in imposing the punishment does not in any way violate the principles of natural justice. Hence, it is prayed that this Hon'ble Court may be pleased to dismiss the petition with costs.

4. The Petitioner Union has filed a rejoinder to the Counter Statement. The averments in the rejoinder are briefly as follows:—

The whole episode has arisen out of the fact that due to the callous and despotic, provocative and adamant approach of the official in-charge of the Currency Chest Branch, of the Respondent/Bank at the relevant point of time. The situation of surcharged atmosphere prevailed in the Currency Chest Branch of the Respondent/Bank and the Petitioner Union in order to reduce the tension and defuse the situation had entered into an elaborate deliberations and after threadbare discussions with the management of the Respondent/Bank, it was agreed to by both the parties though no in writing that even though the concerned workman has admitted his statement of defence on 5-12-96 denying the allegations levelled against him in the charge sheet, the process of enquiry will be avoided and the matter be settled amicably of-course with the minimum punishment to be imposed on the delinquent workman. This has happened during the period between 5-12-96 and 27-3-97, the date on which the concerned workman submitted his letter making admission to the facts of the case. The denial of the same in the Counter Statement is false. The entrance of currency chest is totally manned by the police personnel and not by armed guard. The armed guards are employed by the bank to escort cash in case of remittance and to guard the cash as and when the safe is opened for remittance or otherwise. It is submitted that since the first Disciplinary Authority who had accorded personal hearing did not pass the final order, it was necessary on the part of the 2nd Disciplinary Authority who decided on the case and punished the concerned workman, to have accorded personal hearing to the delinquent workman. This being not complied with the final order becomes invalid, as the Disciplinary Authority who punished the workman had gone through the whole process of evaluation in a mechanical manner to complete an empty formality with an intention to punish the workman without proper application of mind. Hence, it is prayed that this

Court may be pleased to hold that the action of the Respondent/Management is not justified in imposing the penalty of stoppage of two increments permanently on the concerned workman from September, 1997 and to direct the Respondent/Bank to restore the increments and to reimburse all the losses suffered by the workman together with all consequential benefits.

5. When the matter was taken up for enquiry, the xerox copy of the documents filed by the Petitioner/Union have been marked by consent of the counsel for the Respondent/Management as Ex. W1 to W12. No document has been marked as an exhibit on the side of the Respondent/Management. No one has been examined as a witness on either side. The learned representative for the I Party/Union has filed his written arguments. The learned counsel for II Party/Management has advanced his oral arguments.

6. The Point for my consideration is :—

“Whether the management of Vijaya Bank is justified in imposing the punishment of stoppage of two increments on Shri A. K. Akbar Basha, Armed Guard? If not, what relief is the workman entitled to?”

Point :—

The Petitioner Vijaya Bank workers Organisation, Chennai, represented by its Assistant Regional Secretary has raised this dispute espousing the cause of the workman Sri A. K. Akbar Basha. The dispute relates to the action of the Respondent/Management in stopping two annual increments permanently due to the concerned workman Sri A. K. Akbar Basha, armed guard working at Currency Chest Branch of the Respondent/Bank at Coimbatore. The said workman Sri A. K. Akbar Basha was working as armed guard at the Respondent/Bank Currency Chest Branch, Coimbatore since 31-12-1987. His duty is to guard the currency chest at the entrance and should not desert his post for any reason, unless his superiors call/permit him to go out during duty hours. It is alleged by the Respondent/Bank in their Counter Statement that the concerned workman during duty hours on 5-5-96, at about 11.30 am abandoned his post of duty at the entrance of the currency chest and rushed inside the currency chest, wherein Sri B. Gopalakrishnan, Senior Manager was seated and the concerned workman misbehaved with the said official regarding switching on the generator of the currency chest. Further, the concerned workman had also shouted at him in foul language and threatened the Senior Manager with the gun provided to him. The concern-

ed workman, who is working as armed guard, an ex-serviceman, is expected to behave in a disciplined and orderly manner. But, the concerned workman acted in a riotous, disorderly and unruly manner within the premises of currency chest, Coimbatore, leading to wilful insubordination towards official superiors. When the matter was brought to the notice of the management, the Disciplinary Authority had initiated disciplinary proceedings against the concerned workman Sri A. K. Akbar Basha by issuing a charge sheet dated 11-11-96. The staff members of the Respondent/Bank branch had submitted a written memorandum on the same day about this occurrence to the Deputy General Manager, Regional Office of Vijaya Bank at Chennai. The xerox copy of the same is Ex. W1. When a fact finding enquiry was conducted by the official of the Respondent/Bank in respect of the said occurrence, the staff members of the Respondent/Bank branch at Coimbatore had submitted another memorandum dated 4-7-96 to the Enquiry Officer. The xerox copy of the same is Ex. W2. Subsequent to that, a charge sheet dated 11-11-96 was issued to the concerned workman Sri A. K. Akbar Basha and the Deputy General Manager of the Respondent/Bank, Zonal Office as Disciplinary Authority directed the concerned workman to submit his written statement sitting forth his defence, if any, within seven days of the receipt of that charge sheet. The xerox copy of the charge memo dated 11-11-96 is Ex. W3. The concerned workman has submitted his reply dated 5-12-96 for the charge sheet under Ex. W3. The xerox copy of the reply is Ex. W4. Having found that the reply given by the concerned workman Sri A. K. Akbar Basha for the charge memo unsatisfactory, the Disciplinary Authority ordered an enquiry by appointing an Enquiry Officer, who has given a notice dated 6-3-97 fixing the date of enquiry on 3-4-97 at 10.30 am at Currency Chest Branch, Coimbatore. It is alleged by the Respondent/Management in their Counter Statement that however, at the request of the Presenting Officer, the enquiry fixed on 3-4-97 was adjourned to 26-4-97 and the Enquiry Officer informed the date of enquiry to the concerned workman. It is further alleged that the concerned workman submitted a written representation dated 27-3-97, wherein he voluntarily admitted the charges levelled against him under clause 19.12(e) of Bipartite Settlement, 1966 and expressed regret for his actions. The xerox copy of the letter, wherein the concerned workman had voluntarily

admitted the charges levelled against him. is Ex. W5. In view of the voluntary admission made by the concerned workman by his letter dated 27-3-97, the Disciplinary Authority dispensed with the enquiry fixed for 26-4-97. Consequently, the Disciplinary Authority sent a 2nd show cause memo dated 11-6-97, wherein it was proposed to impose the punishment in respect of the charges levelled against the concerned workman under charge sheet dated 11-11-96 as stoppage of two increments permanently, separately on the three charges against the concerned workman and those three above said punishment to run concurrently i.e. in all only two increments were proposed to be stopped permanently which will have the effect of postponing future increments. The concerned workman was called upon to explain why the said punishment should not be imposed upon him for the charges levelled against him for the misconduct he admitted in his letter dated 27-3-97. For that, the concerned workman first submitted his reply dated 18-6-97 in Tamil and the next one in English on the same date. The Xerox copies of those two reply are Ex. W7 and W8 respectively. Then, as per the request of the concerned workman and his representative for a personal hearing with regard to the proposed punishment, the concerned workman was advised to appear before the Disciplinary Authority on 16-7-97 at 3.30 pm along with his defence representative for a personal hearing. Accordingly, the concerned workman had appeared before the Disciplinary Authority along with his defence representative Sri S. D. Srinivasan. During the personal hearing, the concerned workman and his defence representative submitted their representation. It was recorded as a proceeding by the Disciplinary Authority and the same has been signed by the concerned workman, his defence representative and the Disciplinary Authority. The xerox copy of the same is Ex. W9. Subsequently, on transfer of the Disciplinary Authority, who had conducted the proceedings for the personal hearing of the concerned workman with his defence representative, his successor in office took up the matter and perused the entire records along with the proceedings of his predecessor, the Disciplinary Authority and has passed an order dated 1-9-97 imposing the punishment of stoppage of two increments permanently on each one of the three charges and the said punishment to run concurrently which will have the effect of postponing only two future increments. The xerox copy of that final

order passed by the Disciplinary Authority is Ex. W10. Then the concerned workman has preferred an appeal dated 13-10-97 to the Appellate Authority. The xerox copy of that appeal is Ex. W11. The Appellate Authority, after careful consideration of the connected records pertaining to the matter, the grounds urged by the appellant in his appeal memo, passed an order dated 18-11-97, dismissing the appeal as the same is devoid of merits. The xerox copy of that order passed by the Appellate Authority is Ex. W12. All the above documents and the circumstances under which those documents came into existence have been admitted by both the parties.

7. The stand taken by the I Party|Union in the Claim Statement as well as in the rejoinder has been reiterated in the written arguments filed by the representative of the I Party. He would contend that the Union representatives met the Deputy General Manager who was the Disciplinary Authority at the relevant point of time and had a discussion with him in order to defuse the situation and reduce the tension of strained relationship at the Currency Chest Branch of the Respondent|Bank and it was agreed by both the parties to avoid the process of enquiry and to settle the matter amicably and as a sequel to the same, the concerned workman had given an admission letter on 27-3-97. He would further contend that the Disciplinary Authority who passed the order of punishment did not know what had transpired in the personal hearing and without giving an opportunity to the concerned workman for personal hearing he had imposed punishment of stoppage of two increments by perusing the proceedings of the personal hearing reduced to writing by his predecessor in his office as Disciplinary Authority. So, the personal hearing of the first Disciplinary Authority had become an empty formality and that the quantum of punishment of stoppage of two increments which shall have the effect of postponing his future increments is totally unfair, excessive and shockingly disproportionate.

8. The learned counsel for the Respondent|Management would argue that in the final order passed by the Disciplinary Authority under Ex. W10, he has stated clearly that on careful consideration of the relevant records pertaining to the matter and also the representation submitted by the charge sheeted employee dated 27-3-97 by voluntarily admitting

ing the charges under clause 19.12(e) of Bipartite Settlement, 1966, and expressed his regret for his actions. His learned predecessor, the then Disciplinary Authority was inclined to treat this case under clause 19.12(e) of the Bipartite Settlement, 1966 and accordingly, the charge sheeted employee was found guilty of the charges levelled against him and after careful consideration of the relevant records, gravity of the acts of misconduct committed by the charge sheeted employee and also his past service records, his learned predecessor, the then Disciplinary Authority proposed to impose the punishment of stoppage of two increments permanently on each of the three charges against the charge sheeted employee. He has further stated in that order that the charge sheeted employee has voluntarily admitted the charges levelled against him, but in the course of the personal hearing, he along with his defence representative denied the charges, which are neither convincing nor acceptable. The perusal of the documents filed in this case go to show that what it has been observed by the Disciplinary Authority in his order dated 1-9-97 under Ex. W5 are proper and correct. Further, a perusal of the entire documents in this case go to show that the said occurrence has taken place on 25-5-96, wherein the concerned workman behaved in a riotous, disorderly and unruly manner in the premises of the Respondent Bank constituting a gross misconduct under sub-clause (c) of Clause 19.5 of Chapter 19 of Bipartite Settlement, 1966 and had also used foul language for abusing the Senior Manager and also threatened him which amounts to insubordination and acts subversive of discipline which is prejudicial to the interest of the bank, as it is mentioned in the charge sheet against the concerned workman. In a very clear terms in Ex. W5, the concerned workman has given it in writing that he makes voluntary admission for the charges in terms of clause 19.12(e) of the Bipartite Settlement in so far as the facts of this case is concerned and he expressed his deep sense of regret. But later, he takes different stand stating the charges levelled against him are false for the reasons best known to him. He would contend that pursuant to the discussion of his union had with the then Disciplinary Authority, he had given a voluntary admission for the charges levelled against him in terms of clause 19.12(e) of the Bipartite Settlement. The concerned workman or the Petitioner Union had not stated that one such incident spoken to in the charge memo given to the concerned

workman has not at all taken place. If really, one such incident has not at all taken place, there was no necessity for the Union to intervene after a reply dated 5-12-96 was given by the concerned workman denying the charges alleged against him to approach the Disciplinary Authority to defuse the situation and to avoid the enquiry, which was fixed to be held on 26-4-97 and there was no necessity for the concerned workman to submit his written admission under Ex. W5. As contended by the Respondent Management in their Counter Statement, that after the submission of the concerned workman as a voluntary admission of the misconduct, the Respondent has every right to dispense with the enquiry fixed for 26-4-97 and it would be redundant to conduct an enquiry into the charges once the workman voluntarily admits the same, as per the relevant clause of the Bipartite Settlement. The concerned workman who was serving in the Respondent bank as an armed guard for the currency chest, who happened to be an ex-serviceman, is expected to behave in a disciplined manner including obeying the orders of his superiors. The admission of the concerned workman about the commission of the alleged misconduct prove that contrary to the expectations of him as an ex-serviceman, he behaved in a riotous, disorderly and unruly manner in the premises of the currency chest and threatened the Senior Manager and abused him in a foul language. The said acts are grave in nature and hence the disciplinary Authority has imposed the proposed punishment of stoppage of two increments considering the available materials in this case. It cannot be said that the punishment imposed in any way excessive and severe and grossly disproportionate and will not commensurate with the gravity of the admitted misconduct of the concerned workman. Further it cannot be said that the 2nd Disciplinary Authority who imposed the punishment on the concerned workman without giving a personal hearing has violated the principles of natural justice and the terms and provisions of the Awards and Bipartite Settlement. The available records clearly go to show that the Disciplinary Authority who imposed the punishment on the admitted misconduct of the concerned workman has relied upon the proceedings of the earlier Disciplinary Authority, who re-defence representative and also the concerned the signature of charge sheeted employee, his defence representative and also the concerned Disciplinary Authority. So under such circumstances, the 2nd Disciplinary Authority

providing a personal hearing to the concerned employee before imposing the punishment can only be an empty formality. Under such circumstances, it cannot be said that the Disciplinary Authority who imposed the punishment has violated the principles of natural justice, as contended by the representative of the Petitioner Union. Under such circumstances, it can be easily concluded that the management of Vijaya Bank in imposing the punishment of stoppage of two increments on Sri A. K. Akbar Basha, Armed Guard is justified. Hence, the concerned workman is not entitled for any relief.

9. In the result, an Award is passed holding that the concerned workman Sri. A. K. Akbar Basha is not entitled for any relief No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 24th June, 2002).

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None

Exhibits Marked :

For the I Party/Workman :

Ex. No.	Date	Description
W 1	25-05-96	Xerox copy of the letter from staff members, Currency Chest Branch, Vijaya Bank to Respondent

W 2	04-07-96	Xerox copy of the letter from staff members, Currency Chest Branch, Vijaya Bank to Respondent
W 3	11-11-96	Xerox copy of the charge sheet issued to Concerned Workman
W 4	05-12-96	Xerox copy of the letter from concerned workman to Disciplinary Authority
W 5	27-03-97	Xerox copy of the letter concerned workman to Disciplinary Authority
W 6	11-06-97	Xerox copy of the show cause notice
W 7	18-06-97	Xerox copy of the letter from Petitioner to Disciplinary Authority
W 8	18-06-97	Xerox copy of the letter from Petitioner to Disciplinary Authority
W 9	16-07-97	Xerox copy of the enquiry proceedings
W 10	01-09-97	Xerox copy of the order of Disciplinary Authority
W 11	13-10-97	Xerox copy of the appeal preferred by Concerned workman to Appellate Authority
W 12	18-11-97	Xerox copy of the order of the Appellate Authority

For the II Party/Management :—Nil

